SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 143.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

ELIAS E. BARNES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Caption	1	1
Original petition, filed August 4, 1880	1	1
Traverse, filed December 10, 1880	2	2
Petition of Samuel J. Ritchie, as intervenor, filed November 20, 1880	2	2
Plea of set-off, filed January 26, 1882	3	2
Replication, filed February 10, 1882	3	3
Amended petition, filed March 31, 1883	4	3
Motion for leave to amend petition, filed and allowed April 3, 1883	11	8
Judgment, entered October 31, 1887	12	8
Motion of claimant for new trial, filed and allowed April 1, 1895	13	9
Stipulation of parties and motion for judgment, filed November 6, 1895	13	9
Conclusion of law filed by the court and judgment, entered November 11, 1895	14	9
Motion of defendant for new trial and order of court granting same	15	10
Reargument and resubmission of case	15	10
Amended petition, filed March 11, 1902	15	10
Findings of fact and conclusions of law, filed by the court March 31, 1902	29	17
Opinion of the court, filed March 31, 1902	44	31
Final judgment, entered March 31, 1902	50	38
Application for and allowance of appeal	51	38
Mandate of Supreme Court of the United States dismissing appeal for want of jurisdiction	52	38
Motion of defendant for appeal, as provided by act of March 3, 1903, filed May 11, 1903, and allowance of same	53	39
Clerk's certificate	55	40



1 Court of Claims.

ELIAS E. BARNES
vs.
THE DISTRICT OF COLUMBIA. } No. 47. D. C.

I.—*Original petition. Filed August 4, 1880.*

To the honorable the judges of the Court of Claims:

The petition of Elias E. Barnes respectfully represents:

1. That he is a citizen of the United States and a resident of the District of Columbia.

2. That subsequent to February 21, 1871, and prior to December 1, 1875, under contracts with the board of public works and with the Commissioners of said District of Columbia, he had done and performed a large amount of work in the improvement of North Carolina avenue between New Jersey avenue and Fourth street southeast, as appears by the measurements on file in said District, together with extra work done under orders of the District authorities, and that upon a just settlement of his said accounts and for materials furnished, there was due him on said February 1, 1876, a balance of thirty-six thousand nine hundred and eighty-seven and $\frac{11}{100}$ dollars.

3. That upon a just settlement of his accounts for the improvement of D street southeast between New Jersey avenue and Sixth street, there was due him on said December 1, 1875, a balance of fifteen hundred and twenty-four $\frac{63}{100}$ dollars, for work done and materials furnished under contracts with said board of public works and the Commissioners of said District.

4. That there was also due him at said date for work done and materials furnished in the improvement of Third street southeast from D street to the river, under contracts as aforesaid, the further sum of eight thousand two hundred and twelve $\frac{36}{100}$ dollars as the balance of his account on said street.

5. That upon settlement of his account for the improvement of E street southeast between First and Sixth streets, under contracts as aforesaid, there was at said date due him the further sum of one hundred and $\frac{69}{100}$ dollars.

6. That upon settlement of his accounts for the improvement of C street southeast between South Capitol and Third streets, under contracts as aforesaid, there was due him at said date a balance of twenty-two hundred and eighty and $\frac{2}{100}$ dollars.

7. That upon settlement of his accounts for the improvement of M street south between Fourth street east and Four-and-a-half street west, under contracts as aforesaid, there was due him at said date the further sum of eleven thousand six hundred nine and $\frac{14}{100}$ dollars.

8. That for taking up and removing brick pavements, curb, gutters, and other old material under orders from the said board of public works prior to August 1st, 1874, there is justly due him the sum of five thousand four hundred twenty-six and $\frac{74}{100}$ dollars.

2 9. That upon settlement of his account for work done on Second street southeast, made in January, 1876, there was retained a per-

centage of one hundred seventy-one and $\frac{69}{100}$ dollars, which is still due and unpaid.

10. That upon settlement of his accounts for putting down a pipe and brick sewer on I street southeast between Second and Third streets, there was withheld from him a percentage amountin*t* to forty-nine and $\frac{29}{100}$ dollars, for work done prior to January 1, 1875, as per board of audit voucher No. 14129.

And petitioner avers that said several sums, amounting in the whole to sixty-six thousand three hundred sixty-one and $\frac{67}{100}$ dollars, are still due and unpaid, and he prays judgment therefor against the said District of Columbia.

E. E. BARNES.

Elias E. Barnes, the petitioner aforesaid, says that the facts stated in the foregoing petition are true; that he is justly entitled to the amount therein claimed after allowing all just credits and offsets; that no assignment or transfer of said claim *as* any part thereof or interest therein has been made other than two powers of attorney to one S. J. Ritchie to collect two small sums, one of six thousand dollars and one of five thousand dollars, both of which said power- of attorney have been revoked by written instrument, duly executed and filed with notice; and one unrevoked power of attorney to said Ritchie to collect one thousand dollars on account.

Sworn to and subscribed this 3d day of August, A. D. 1880, before me,

CHARLES WALTER,
United States Com'r.

Claimant's address, Washington, D. C.

SAM M. WILCOX,
Att'y for Claimant, Washington, D. C.

II.—*General traverse. Filed December 10, 1880.*

And now comes the Attorney-General, on behalf of the District of Columbia, and answering the petition of the claiman*d* herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

THOMAS SIMONS,
Assistant Attorney-General.

III.—*Samuel J. Ritchie, intervenor.*

On the 20th day of November, 1880, Samuel J. Ritchie, by leave of court, filed his petition intervening.

3 IV.—*Plea of set off. Filed January 26, 1882.*

ELIAS E. BARNES
vs.
THE DISTRICT OF COLUMBIA. } No. 47.

And now comes the Attorney-General on behalf of the District of Columbia, and for a further plea says:

That at and before the institution of this suit, the claimant was and still is indebted unto the District of Columbia in the full and just sum of $25,000 for money had and received to the use of the defendant, and the said claimant being so indebted as aforesaid, in consideration thereof promised to pay the defendants the said sum of money on request; yet the said claimant, although often requested so to do, hath not, nor hath anyone in his behalf, as yet paid the same sum or any part thereof, but hath wholly neglected and refused, and still neglects and refuses, so to do; which said sum so due as aforesaid the defendant claims to set off against the demand of the claimant, and thereupon he brings his counter claim.

THOMAS SIMONS,
Assistant Attorney-General.

V.—*Replication. Filed February 10, 1882.*

Now comes the claimant by H. E. Paine, his attorney, and for replication to the plea of set off herein filed on the 26th day of January, 1882, says that by reason of anything in the said plea alleged, he ought not to be barred from having and maintaining his aforesaid action against the said defendant, because he says that he is not indebted to the said defendant in the sum of $25,000, as in said plea alleged, or in any other sum, and that he has not, at any time, promised to pay said sum or any part thereof to said defendant; wherefore he prays judgment for the sum of $66,174.36 as demanded in his petition herein filed.

ELIAS E. BARNES,
By H. E. PAINE, *Atty.*

DISTRICT OF COLUMBIA, *ss:*

Elias E. Barnes, having been duly sworn, says that he is the claimant named in the foregoing replication, and that said replication is true.

ELIAS E. BARNES.

Subscribed and sworn to before me, this 10th day of February, 1882.

RUTLEDGE WILLSON,
Notary Public.

4 VI.—*Amended petition. Filed March 31, 1883.*

AMENDED PETITION.

To the Honorable Court of Claims:

Elias E. Barnes respectfully prefers his petition, to wit:

I.

That he is a citizen of the United States and a resident of the District of Columbia.

II.

That April 29, 1872, claimant entered into a contract with board of public works, known as contract No. 264, for the improvement of North Carolina avenue, between New Jersey avenue and Fourth street, and of

D street, Southeast; also for the construction of certain sewers. That said contract was subsequently extended by the board of public works, and by the Commissioners of the District of Columbia, to provide for a large amount of additional work on the same, and on other streets.

III.

That prior to the commencement of the claimant's work, under said contract, there had been excavated from the line of North Carolina avenue, within the limits of said contract, 33,377⅔ cubic yards of earth and sand.

That under said contract and extensions, and under orders from defendant's officers in connection therewith, claimant did work and furnished materials, as follows:

5 *On North Carolina avenue.*

2,318 lineal feet 12-inch new gutter flagging laid, at 35 cents per foot		$811.30
629 feet 16-inch gutter flagging laid, at 48 cents per foot		301.92
17.7 feet 5-inch granite circular curb and setting, at $2.05 per foot		36.28
14.1 feet 5-inch circular curb, Gleason pattern		28.90
64 cubic yards sewer excavation, at 40 cents per yard		25.60
90 feet 12-inch pipe laid, at 77 cents		79.20
1 trap or receiving basin		157.58
3,972.34 square yards gravelling, at 15 cents		595.85
3,008.92 square yards new brick pavement, at $1.00 per yard		3,008.92
1,376 square yards cobblestone laid, at 70 cents per yard		963.20
1,210.7 feet 16-inch flagging for crossing laid, at 60 cents		926.42
1,889.3 feet 5-inch new curb and setting, at $1.20 per foot		2,267.16
750 feet of blind drain, at $1.00 per foot		750.00
44,975 cubic yards grading (under board of public works), at 30 cents		13,492.50
44,975 cubic yards hauled 868 feet over 200 feet, at 1¼ cents per yard per 100 feet		4,879.78
44,136.6 cubic yards grading (under Commissioners of the District of Columbia), at 30 cts		13,240.08
44,133.6 cubic yards hauled 1,550 feet over 200 feet, at 1½ cents per yard per 100 feet		6,549.06
23,704 cubic yards clay excavation, at 30 cents additional		7,111.20
		$55,224.95
Credit by certificates	$43,226.36	
" " materials	89.50	
		43,315.86
Balance due March 1, 1876		11,909.09

IV.

That under the extension of said contract, or under orders of defendant's officers in connection therewith, claimant also did work and furnished materials as follows:

On C street from So. Capt. to 3d street East.

2,847.40 square yards new brick pavement laid, at $1.00 per square yard.		$2,847.40
8.33 square yards old brick pavement relaid, at 25 cents per square yard.		2.08
865.67 sq. yds. new cobblestone pavement laid, at 70 cents per square yard		605.98
2,141 lin. ft. 5-in. new B. S. curb and setting, at $1.20 pr. ft		2,569.20
6 34.5 lin. ft. 5 in. curb reset, at 25 cents		8.62
10.5 " " 6 " " " " 30 "		3.15
21.35 " " 6 " granite cir. curb and setting, at 20 cts. pr. ft		43.47

6.25 lin. ft. 6 in. granite cir. curb reset, at 30 cts. pr. ft		$1.87
2,191 running feet 12-inch new gutter flagging laid, at 35 cents per foot		766.85
207 running feet 16-inch new gutter flagging laid, at 48 cents		99.36
2,848.6 cub. yds. grading, at 40 cts. per yd		1,139.44
4,469.6 " " " " 30 cents pr. yd		1,340.88
7,318.2 " " " haul 1,220 feet over 200 feet, at 15.25 cts. pr. yd.		1,116.02
3,060 sq. ft. gravelling, at 15 cts. pr. yd		459.00
1,326 ft. B. S. curb redressed, at 20 cts. pr. ft.		265.20
Sewer work 2d to 3d sts. (net)		328.99
1,801 cub. yds. grading, at 30 cents		540.30
1,801 cub. yds. hauled 1,220 feet over 200 feet, at 15¼ cents per yard		274.65
		$12,412.76
Credit by certificates	$8,177.79	
" " materials	1,140.00	
		9,317.79
Balance due November 1, 1875		$3,094.97

V.

That under said contract extensions, or under orders of defendant's officers in connection therewith, claimant also did work and furnished materials, as follows:

On D street SE.

438 sq. yds. old brick pavement laid, at 25 cts. per yd		$109.50
3,060 cub. yds. grading, at 40 cts. per yard		1,224.00
16,250 " " " " 30 " " "		4,877.40
17,518 " " haul, 2,400 ft. over 200 ft., at 30 cts. pr. yd		5,255.40
1,345 sq. yds. of sodding, at 50 cts. pr. sq. yd		672.50
2,159 cub. yds. grading, at 40 " " " "		863.60
3,841 " " " " 30 " " " "		1,152.30
6,000 " " haul, 3,014 ft. over 200 ft., at 37.68 cents per yard		2,260.80
4,667.11 sq. yds. new brick pavement laid, at $1.00		4,667.11
4,266.45 lin'l ft. 5 in. new B. S. curb and setting, at $1.20 per foot		5,119.74
435 lin'l ft. 6 in. new granite curb and setting, at $1.42 per foot		617.70
41.4 lin'l ft. granite circ. curb and setting at $2.05 per foot		84.87
932.4 sq. yds. new cobblestone pavement laid, at 70 cts. per yard		652.68
3,735.6 sq. yds. gravelling, at 15 cents		560.34
7 solid granite corners, at $25 each		175.00
Amount retained per voucher No. 14,902		154.80
7 2,57[illegible] ft. 12 in. gutter flagging laid, at 35 cents		$900.20
574 ft. 16 in. bridging laid, at 60 cents		344.40
465 cub. yds. grading, at 30 cents		139.50
465 cub. yds. extra haul, at 37.68 cts.		174.21
		$30,006.05
Credit by certificates	$26,412.67	
" " material	577.88	
		26,990.55
Balance due March 1, 1876		3,015.50

VI.

That under the extensions of said contract, or under orders of defendant's officers in connection therewith, claimant also did work and furnished materials, as follows:

On E street SE.

4,981.88 cub. yds. grading, at 40 cts. pr. yd	$1,992.75
24,229.62 cub. yds. grading, at 30 cts. pr. yd	7,268.89
24,824.40 " " haul, 1,134 ft. over 200 ft., at 14.17 cts. pr. yd	3,517.62
4,387.10 cub. yds. haul 2,800 ft. over 200 ft., at 35 cts. pr. yd	1,535.48

1,602.22 sq. yds. new brick pavement laid, at $1.00 per yard		$1,602.22
37 sq. yds. new cobblestone pavement, at 70 cts. pr. yd		25.90
1,227 lin'l ft. 5 in. new B. S. curb and setting, at $1.20 per ft		1,472.40
14.1 lin'l ft. granite circ. curb and setting, at $2.05 per foot		28.91
24 running feet 12-inch new gutter flag laid, at 35 cents per foot		8.40
136 running feet 16-inch new gutter flag laid, 48 cents per foot		65.28
2,114 cub. yds. grading, at 30 cents per yard		634.20
2,114 " " haul 2,626 ft. over 200 ft., at 32.82 cts. pr. yd		693.81
Sewer work E st., SE., 2d to 3d (net)		192.76
408 cub. yds. grading, at 30 cts		122.40
408 " " extra haul, at 32.82 cts		133.90
		$19,294.56
Credit by certificates and cash	$16,851.39	
" " material	2,086.54	
		18,937.93
Balance due January 1, 1876		356.63

8 VII.

That July 23, 1872, claimant entered into a contract with the board of public works, known as contract No. 413, for the improvement of Second, Third, and Fourth streets east, between Maryland and Pennsylvania avenues; also for the construction of a sewer on Second street, between East Capitol street and Maryland avenue. That said contract was subsequently extended by the Commissioners of the District of Columbia to provide for additional work on other streets.

VIII.

That under said contract and extension, or under orders of defendant's officers in connection therewith, claimant did work and furnished materials as follows:

On Third street SE.

5,030.5 sq. yds. Belgian pavement, laid, at $3.50 per sq. yd		$17,606.75
176 running feet 16-inch gutter flag, laid, at 48 cents per foot		84.48
198.8 sq. yds. new cobblestone pavement, laid, at 70 cents per yard		139.16
747.4 sq. ft. flag crossing, at 60 cts. pr. ft		448.44
122 running ft. 12 in. gutter flag, at 35 cts. per foot		42.70
1,956 cub. yds. grading, at 30 cts. pr. yd		586.80
1,956 " " haul 2,900 ft. over 200 ft., at 36.25 cts. pr. yd		618.05
Amount retained per vou. 10,833		226.09
1,802 cub. yds. grading, at 30 cts. pr. yd		540.60
3,734 " " " " 40 " " "		1,493.60
5,536 " " haul 1,412 ft. over 200 ft., at 17.65 cts. pr. yd		977.10
Lowering and repairs of water mains		399.30
Amount retained per sewer voucher No. 14129		313.30
		$23,476.37
Credit by certificates	$15,061.03	
" " material	93.51	
		15,154.54
Balance due March 1, 1876		8,321.83

9 IX.

That under said contract and extension, and under orders of defendant's officers in connection therewith, claimant also did work and furnished materials as follows:

On M street south.

3,406.6 sq. ft. 16 in. crossing, laid, at 60 cts		$2,043.96
6,747.10 sq. yds. new brick pavement, laid, at $1.00 per yard		6,747.10
5,723.78 sq. yds. new cobblestone pavement, laid, at 70 cents per yard		4,006.64
6,401 lin'l ft. 5 in. new b. s. curb and setting, at $1.20 per foot		7,681.20
65.8 lin'l ft. granite circ. curb, Gleason pattern, at $2.05 per foot		134.89
101 lin'l ft. granite cir. curb and setting, at $2.05 per foot		207.05
6,025 running feet 12 in. new gutter flag, laid, at 35 cts. per foot		2,108.75
1,481 running ft. 16 in. new gutter flag, laid, at 48 cts		710.88
19,849 cub. yds. grading, at 30 cts. per yard		5,954.70
9,867 " " " " 40 " " "		3,946.80
29,716 " " haul, 736 ft. over 200 ft., at 9.2 cts. per yard		2,733.87
6,973.23 sq. yds. blue rock pavement, laid, at $1.75 per yd		12,203.15
4,097 cub. yds. grading, at 30 cents		1,429.10
4,097 " " extra haul, at 92 cents		376.92
		$50,445.49
Credit by certificates	$33,863.11	
" " material	4,476.54	
		38,339.65
Balance due March 1, 1876		$12,105.74

X.

That defendant is also indebted to the claimant as follows:

Miscellaneous account.

To taking up and removing old material from various streets, as per itemized account rendered to the late board of audit of the District of Columbia		$5,426.74
To erroneous credit claimed by board of public works, account of Aug. 26, 1873		16.50
10 To amount retained under contract No. 264 upon work done on 2nd street SE., between D and E streets, per vou. No. 1045		171.69
To amount retained under contract No. 843, upon work done on "I" street SE., between 2nd and 3rd streets, per account of January 30, 1875		49.29
To hauling new material from property yard		898.54
		$6,562.76

XI.

That, owing to the unforeseen rise in the price of labor after said contracts Nos. 264 and 413 were first executed, the board of public works, by an order duly entered upon its official records, modified said contracts by changing the rates to be paid for extra haul from ½ cent to 1¼ per yard per 100 feet; that such extra haul was fully worth the said increased price; and that in all partial settlements made by defendant's officers the justice, validity, and binding character of said modification have been fully recognised, and payments made accordingly.

Your petitioner therefore alleges that he is justly entitled to receive from the defendant the balances above mentioned, with interest, as provided by law. Wherefore he prays judgment accordingly.

E. E. BARNES,
Petitioner.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, a notary public in and for the District aforesaid, Elias Barnes, who made oath in due form and according to law that the statements made in the foregoing petition are true, and that no

assignment or transfer of the said claim, or any part thereof, has ever been made to the best of his knowledge and belief.

Witness my hand and seal this thirty-first day of March, A. D. 1883.

[SEAL.] ALBION K. PARRIS,
Notary Public.

11 VII.—*Motion for leave to amend petition. Filed April 3, 1883 and allowance of court on same.*

ELIAS E. BARNES
vs.
THE DISTRICT OF COLUMBIA. } No. 47.

Now comes the said claimant, by his attorneys, J. W. and G. L. Douglass, and moves the court for leave to amend his manuscript petition filed March 31, 1883, in the following particular: Insert this paragraph:

XI.

"That owing to the unfor'seen rise in the price of labor after said contracts numbers 264 and 413 were first executed, the board of public works, by an order duly entered upon its official records, modified said contracts by changing the rate to be paid for extra haul from ½ cent to 1¼ cents per yard per 100 feet; that such extra haul was fully worth the said increased price; and that in all partial settlements made by defendant's officers, the justice, validity, and binding character of said modification have been fully recognized and payments made accordingly."

Also correct the figures in the account for the North Carolina avenue grading in conformity with the above.

J. W. & G. L. DOUGLASS,
Attys. for Claimant.

Allowed, April 3, 1883.

WILLIAM A. RICHARDSON,
Judge, &c.

12 VIII.—*Judgment of the court entered Oct. 31, 1887.*

ELIAS E. BARNES, S. J. RITCHIE, INTERVENING,
vs.
THE DISTRICT OF COLUMBIA. } No. 47.

At a Court of Claims held in the city of Washington on the 31st day of October, 1887, judgment was ordered to be entered as follows:

The court, on due consideration of the premises both for and against the District of Columbia and the claimant upon the petition of the claimant and the counter claim of the defendant, finds upon the whole case that the claimant is indebted to the defendant in the sum of eleven thousand and seventy-four dollars and eleven cents, and do order, adjudge, and decree that the defendant, the District of Columbia, do have and recover of and from the said Elias E. Barnes the sum of eleven thousand and seventy-four dollars and eleven cents ($11,074.$\frac{11}{100}$), and that the intervening petition of S. J. Ritchie be dismissed.

BY THE COURT.

13 IX.—*Motion of claimant for new trial filed and allowed.*

On November 18, 1887, the claimant filed a motion for new trial, which was submitted March 28, 1895, and allowed by the court April 1, 1895.

X.—*Stipulation of parties and motion for judgment. Filed November 6, 1895.*

On the 6th day of November, 1895, the claimant filed the report of the referee herein, and stipulation of parties as to judgment, and a motion that judgment be entered in accordance with said report and stipulation.

14 XI.—*Conclusion of law, filed by the court November 11, 1895, and the judgment of the court thereon.*

ELIAS E. BARNES
vs.
THE DISTRICT OF COLUMBIA. } Court of Claims. No. 47, D. C.

The referee in this case having made a report, and no exceptions thereto having been taken by either party, the same is adopted as the findings of the court, and thereon, as a conclusion of law, the court decides that the claimant is entitled to recover from the District of Columbia the sum of thirty-one thousand seven hundred and fifty-four dollars and fifty-seven cents ($31,754.57), due and payable on January 1, 1876, being the amount therein found due; to be divided according to the stipulation of parties filed of record and judgment is to be entered as follows, in accordance with said stipulation:

To Elias E. Barnes the sum of twenty-two thousand three hundred and fifty dollars and fifty-four cents ($22,350.54), and to Samuel J. Ritchie the sum of nine thousand four hundred and four dollars and three cents ($9,404.03).

And it was thereupon ordered that judgment be entered as follows:

That the said Elias E. Barnes do have and recover in the manner provided by the act of June 16, 1880, chapter 243, and under the act of February 13, 1895, the sum of thirty-one thousand seven hundred and fifty-four 57/100 dollars ($31,754.57) upon debts of the District of Columbia due and payable January 1, 1876, said amount to be divided and paid as follows: To Elias E. Barnes twenty-two thousand three hundred and fifty 54/100 dollars ($22,350.54), and to Samuel J. Ritchie nine thousand four hundred and four 03/100 dollars ($9,404.03).

BY THE COURT.

November 11, 1895.

XII.—*Motion of defendant for new trial and order of court granting same.*

On the 20th day of April, 1896, the defendant filed its motion for a new trial, and on the 18th day of May, 1896, the court filed the following order granting said motion, to wit:

ELIAS E. BARNES AND SAMUEL J. RITCHIE
vs.
THE DISTRICT OF COLUMBIA. } No. 47, D. C.

ORDER ON MOTION FOR NEW TRIAL BY DEFENDANT.

A new trial is granted under the provisions of R. S. 1088, it appearing to the court that wrong and injustice have been done to the District of Columbia and to the United States, who are made liable for the payment of one-half of the expenditures of the District by the act of 1878, June 11, ch. 180, sec. 3. (1 Supp. to R. S., 2nd. ed., p. 176.)

BY THE COURT.

Filed May 18, 1896.

XIII.—*Reargument and resubmission of case.*

On the 19th day of December, 1901, and on the 14th, 15th, and 16th days of January, 1902, this case was reargued and resubmitted.

XIV.—*Amended petition. Filed March 11, 1902.*

To the honorable chief justice and judges of the Court of Claims:

The amended petition of Elias E. Barnes respectfully shows:

I.

That on the 29th day of April, 1872, the board of public works awarded to the claimant a contract for grading D street south and North Carolina avenue from Fourth street east to New Jersey avenue at board prices, and directed its contract clerk to prepare a contract in accordance with said award.

16 II.

That at the time of the award of said contract the board prices for excavation in grading streets were:

For each cubic yard of earth, sand, and gravel excavated and hauled 200 feet	30 cents.
For each cubic yard of old graveled streets excavated and hauled 200 feet.	40 cents.
For each cubic yard of rock excavated and hauled 200 feet	$1.00
For each cubic yard of hard clay	60 cents.

and ½ cent per cubic yard for every 100 feet hauled over the first 200 feet.

III.

That the said contract clerk prepared a contract for the work embraced in the said award under date of April 29, 1872, but by mistake omitted to insert therein any stipulated price for the "old gravel," rock, or stiff clay excavation, and the said claimant and the board of public works signed the same without observing the said omission, said contract being numbered 264 in the series of contracts made by said board of public works.

IV.

That at the time of entering into said contract the established grade, as prescribed by law, involved the excavation of about 32,739 cubic yards on North Carolina avenue and about 4,267 cubic yards of excavation on D street, which work was finished about the 22d of August, 1872, by the claimant, which work completed the grading of said streets as required by the terms of said contract.

17 V.

That about January 1, 1873, the Board of Public Works increased their rate of hauling earth from ½ cent per cubic yard per hundred feet to 1¼ cents per cubic yard per hundred feet, and after said date all work of that character was paid for at that price, and the abutting property was assessed at the price for hauling as herein set forth.

VI.

That after the claimant had brought the streets to their established grade they remained at that grade until about the year 1874, when the Commissioners of the District determined to change their grade, and thereupon directed the claimant to further excavate the said streets in order to make their grade conform to the newly established grade, with the understanding and agreement that such additional work should be performed at then existing board rates, and be paid for in certificates, convertible into 3.65 District of Columbia bonds.

VII.

That after entering into the said contract designated contract No. 264 the claimant entered into other contracts with the Board of Public Works and the Commissioners of the District of Columbia, designated as extensions of contract No. 264, dated, respectively, May 21, 1873, June 19, 1875, and December 25, 1875, and including additional work, all of which board prices for work were stipulated to be paid.

VIII.

That after the change of grade of North Carolina avenue the claimant excavated, in order to bring it down to the new grade, 64,573.6
18 cubic yards between New Jersey avenue and Fourth street east, upon which, according to the agreement with the Commissioners

of the District, the haul was to be at the rate of 1¼ cents per hundred feet per cubic yard of haul, which was to be paid for in District of Columbia 3.65 bonds at par.

XI.

That under said contract 264 and its extensions and as extra work thereunder and as reformed by the insertion of the omitted board rates the claimant performed the following work and is entitled to recover the prices herein set forth:

North Carolina avenue—Contract 264.

1.	2,318 lin. ft. 12-inch gutter flag laid, @ 35c	$811.30
2.	533 lin. ft. 16-inch gutter flag laid, @ 48c	255.84
3.	17.7 ft. 5-inch granite curb laid, @ $2.05	36.28
4.	14.1 ft. 5-inch circular curb, Gleason pattern, @ $2.05	28.90
5.	64 cubic yards sewer excavation, @ 40c	25.60
6.	90 ft. 12-inch pipe laid, @ 88c	79.20
7.	1 trap	157.58
8.	3,972.34 square yards graveling, @ 15c	595.85
9.	3,008.92 square yards brick pavement, @ $1	3,008.92
10.	1,376 square yards cobble pavement, @ 70c	963.20
11.	1,210 ft. 16-inch flagging for crossings laid, @ 60c	726.42
12.	1,889.3 ft. 5-inch new curb and setting, @ $1.20	2,267.16
13.	32,793 cub. yards excavation, per meas. Aug. 9, 1872, @ 30c. (p. 337; paid, p. 340), to establish grade	9,837.90
	13½. Haul on same, @ ½c. per 100 ft. (p. 341), 1,100 ft., @ 5½c.	1,803.61
19	14. 20,438 cub. yds. excavation, per meas. Mar. 27, 1875 (p. 342), @ 1¼c., between Coyle grade and new grade	$6,131.40
14½.	3,854 cub. yds. haul 300 ft., @ 1¼c. per 100 ft. (p. 343), @ 3¾c.	144.52
14¾.	16,584 cub. yds. haul 1,100 ft., @ 13¾c. (p. 342), @ 1¼c. per 100 ft.	2,280.30
15.	10,585.6 cub. yds. excavation, per meas. Dec. 2, 1875 (p. 343), @ 30c. per cub. yd., between Coyle grade and new grade	3,175.68
15½.	Haul on 10,585.6 cub. yds., 1,550 ft., @ .1937c. (p. 342), @ 1¼c. per 100 ft	2,050.43
16.	33,550 cub. yds. excavation, per meas. Jan. 22, 1876 (p. 344), @ 30c. per cub. yd., between Coyle grade and new grade	10,065.00
16½.	Haul on 33,550 cub. yds. 1,550 ft., @ .1937c. (p. 344), @ 1¼c. per 100 ft	6,498.63
17.	775.5 lin. ft. 5-inch curb, @ $1.20	930.60
18.	1,077.78 square yards brick pavement, @ $1.00	1,077.78
19.	2,160 square yards graveling, @ 15c	324.00
20.	750 ft. blind drain, @ $1.00	750.00
21.	Additional on clay excavation, 23,704 cub. yds., @ 30c	7,111.20
22.	Excavation under sidewalks, viz, 10 inches depth under 4,086.70 sq. yds. brick pavement, 1,135.19 cub. yds., @ 30c	340.55
	2,044.11 cub. yds. excavation under carriageway, 12 inches depth, under 6,132.34 sq. yds. graveling, @ 30c	613.23
	Haul on above 3,179.30 cub. yds. 1,550 ft., @ .1937c	615.83
		$62,706.91

20 *On D street SE.—Contract 264.*

1.	4,667.11 sq. yds. brick pavement laid, @ $1	$4,667.11
2 and 3.	5,219 cub. yds. excavation, @ 40c., meas. of Dec. 14, 1876, between 2d and 6th sts	2,087.60
4.	19,471 cub. yds. excavation, @ 30c., meas. of Dec. 4, 1876, between 2d and 6th sts	4,877.40
5.	Haul of 2,238 cub. yds. excavation between original surface and established grade, 2,358 feet, @ ½c. per 100 feet, .1179c	278.00
6.	Haul of 20,752 cub. yds. excavation between established grade and new grade, 2,358 feet, @ 1¼c. per 100 ft., .2947c	6,115.61
[6.]	Included in items Nos. 5 and 6.	

7.	1,345 sq. yds. sodding, @ 50c	$672.50
8.	4,266.45 lin. ft. 5″ b. s. curb and setting, @ $1.20	5,119.74
9.	435 lin. ft. 6″ granite curb and setting, @ $1.42	617.70
10.	41.4 lin. ft. granite cir. curb and setting, @ $2.05	84.87
11.	932.4 sq. yds. cobble-stone pavement laid, @ 70c	652.68
12.	3,735.6 sq. yds. graveling, @ 15c	560.34
13.	—— ft. g. granite corners, @ $2.05	67.44
14.	1,133 lin. ft. 12″ sewer and laying, @ 88c	997.04
15.	274 lin. ft. 15″ sewer and laying, @ $1.33	364.42
16.	819 lin. ft. 6″ sewer and laying, @ 36c	294.84
21 17.	111 lin. ft. 12″ x 6″ connections, @ $1.38	$153.18
18.	30 lin. ft. 15″ x 6″ connections, @ $1.80	54.00
19.	2 manholes, 6′ to 8′ deep, @ $42.24	84.48
20.	5 manholes, 8′ to 10′ deep, @ $52.80	264.00
21.	4 manholes, 10′ to 12′ deep, @ $63.36	253.44
22.	1 receiving basin, new pattern	157.58
23.	2 receiving basins	315.16
	2 receiving basins, old pattern, reset, @ $37.00	74.00
24.	1,450.50 cub. yds. excavation, @ 40c	580.20
25.	90 lin. ft. 12″ sewer and laying, @ 88c	79.20
26.	70.5 cub. yds. excavation, @ 40c	28.20
27.	2,561 ft. 12″ gutter flag laid, @ 35c	896.35
28.	456 ft. 16″ bridging, @ 60c	273.60
		$30.670.68

On E street SE.—E street—Contract 264.

1.	4,981.88 cub. yds. grading, @ 40c	$1,992.75
2.	24,229.62 cub. yds. grading, @ 30c	7,268.89
3.	24,824.40 cub. yds. haul 1,134 ft. over 200 ft., @ 1¼c	3,517.62
4.	4,387.10 cub. yds. haul 2,800 ft. over 200 ft., @ 1¼c	1,535.48
5.	1,602.22 sq. yds. brick pavement laid, @ $1.00	1,602.22
6.	37 sq. yds. cobblestone pavement laid, @ 70c	25.90
7.	1,227 lin. ft. 5″ b. s. curb and setting, @ $1.20	1,472.40
8.	14.1 lin. ft. granite cir. curb and setting, @ $2.05	28.91
9.	24 running ft. gutter flag laid, @ 35c	8.40
10.	136 running ft. gutter flag laid, @ 48c	65.28
22 11.	2,114 cub. yds. grading, @ 30c	634.20
12.	2,114 cub. yds. haul 2,626 ft. over 200 ft., @ 1¼c	693.81
13.	Sewer work on E, viz:	
14.	104 lin. ft. 12″ sewer pipe, @ 88c	91.52
15.	48 lin. ft. 6″ sewer pipe, @ 36c	17.28
16.	6 lin. ft. 12″ x 6″ connections, @ $1.38	8.28
17.	1 manhole, 7′ deep	42.24
18.	83.6 cub. yds. excavation, @ 40c	33.44
		$19,038.62

XII.

That on or about the 23d day of July, 1873, the Board of Public Works awarded to the claimant a contract to grade, etc., Second, Third, and Fourth streets S. E. between Maryland and Virginia avenues, at board prices, as set forth in letter of award.

XIII.

That the contract clerk omitted to insert in the said contract the board price for excavating old gravel streets, and the contract with said omission was signed by claimant and the Board of Public Works by mistake, without observing said omission, and the same is entitled to be reformed by the insertion of said omitted price, which contract was numbered 413 in the series of contracts of the Board of Public Works.

XIV.

That under said contract 413 and its extensions the claimant performed the following work on C street and M street for the hereinafter-named prices, for which no final settlement has been had, viz:

23 *On C street SE.—Contract 413.*

1.	2,847.40 sq. yds. brick pavement laid, @ $1	$2,847.40
2.	8.33 sq. yds. old brick pavement relaid, @ 25c	2.08
3.	865.67 sq. yds. cobblestone pavement laid, @ 70c	605.96
4.	2,141 lin. ft. 5″ b. s. curb and setting, @ $1.20	2,569.20
5.	34.5 lin. ft. 5″ curb reset, @ 25c	8.62
6.	10.5 lin. ft. 6″ curb reset, @ 30c	3.15
7.	21.35 lin. ft. 6″ granite cir. curb and setting, @ $2.05	43.77
8.	6.25 lin. ft. 6″ granite cir. curb reset, @ 30c	1.87
9.	2,191 running ft. 12″ gutter flag laid, @ 35c	766.85
10.	207 running ft. 16″ gutter flag laid, @ 48c	99.36
11.	2,848.6 cub. yds. grading, @ 40c	1,139.44
12.	4,469.6 cub. yds. grading, @ 30c	1,340.88
13.	7,318.2 cub. yds. haul, 1,220 ft. over 200 ft., @ $15.25	1,116.02
14.	3,060 sq. ft. graveling, per yd., 15c	459.00
15.	1,326 ft. b. s. curb redressed, @ 20c	265.20
16.	Sewer work, Second to Third st., viz:	
	298 lin. ft. 12″ sewer pipe and laying, @ 88c	262.24
	21 lin. ft. 6″ sewer pipe and laying, @ 36c	7.56
	30 lin. ft. 12″ x 6″ connection pipe and laying, @ $1.38	41.40
	3 manholes, 10′ to 12′ deep, @ $63.36	190.08
	310.72 cub. yds. of excavation, @ 40c	124.25
		$11,894.33

24 *On M street south—M street SW.—Contract 413.*

1.	3,406 sq. ft. 16-in. crossing laid, @ 60c	$2,043.96
2.	6,747.10 sq. yds. brick pavement laid, @ $1	6,747.10
3.	5,723.78 sq. yds. cobblestone pavement laid, @ 70c	4,006.64
4.	6,401 lin. ft. 5″ b. s. curb and setting, @ $1.20	7,681.20
5.	65.8 lin. ft. granite cir. curb, Gleason pattern, @ $2.05	134.89
6.	101 lin. ft. granite cir. curb and setting, @ $2.05	207.05
7.	6,025 running ft. 12″ gutter flag laid, @ 35c	2,108.75
8.	1,481 running ft. 16-in. new gutter flag laid, @ 48c	710.88
9.	19,849 cub. yds. grading, @ 30c	5,954.70
10.	9,867 cub. yds. grading, @ 40c	3,946.80
11.	29,716 cub. yds. haul 736 ft. over 200 ft., @ .092	2,733.87
12.	6,973.23 sq. yds. blue rock pavement laid, @ $1.75 per yd	12,203.15
13.	4,097 cub. yds. grading, @ 30c	1,429.10
14.	4,097 cub. yds. extra haul, @ 1½c	376.92
		$50,285.01

XV.

That under the terms of said contract 413 and the extensions thereof, and under the terms of the understanding with the Commissioners of the District as to price and payment, the claimant performed the following work on Third street SE., between Pennsylvania avenue and Virginia avenue, at prices herein set forth.

25 *Third street—Contract 413.*

1.	5,030.5 sq. yds. Belgian pavement laid, @ $3.50	$17,606.75
2.	See item 4.	
3.	198.8 sq. yds. cobblestone, @ 70c	139.16
4.	747.4 sq. ft. flag crossing, @ 60c	448.44
5.	122 running ft. 12″ gutter flag, @ 35c	42.70
6.	1,956 cubic yds. grading, @ 30c	586.80
7.	1,000 cubic yds. haul, 2,900 ft. over 200 ft., @ 1¼c per 100 ft	362.50
8.	1,802 cubic yds. grading, @ 30c	540.60
9.	3,734 cubic yds. grading, @ 40c	1,493.60
10.	5,536 cubic yds. haul, 1,412 ft. over 200 ft., @ 1¼c	977.10
11.	Lowering and repairs of water mains	399.30
12.	4,521.82 sq. yds. brick pavement laid, @ $1	4,521.82
13.	2,815 running ft. 5″ b. s. curb and setting, @ $1.20	3,378.00
14.	713 running ft. 6″ b. s. curb and setting, @ $1.42	1,012.46
15.	4 running ft. 6″ granite circular curb set, @ $1.42	5.68
16.	18.6 running ft. 6″ granite circular curb reset, @ 30c	5.58
17.	32.3 running ft. 6″ granite circular curb set, @ $2.05	66.20
18.	3 running ft. 6″ b. s. circular curb set, @ $2.05	6.15
19.	6.75 running ft. 4″ b. s. circular curb set, @ $2.05	13.83
20.	288 running ft. 5″ b. s. circular curb reset, @ 25c	72.00
21.	22,248.83 cubic yds. excavation, @ 30c	6,674.64
	22. 7,078 cubic yds. excavation, @ 40c	2,831.20
26	23*a*. 7,078 cubic yds. haul, 1,655 feet over 200 ft., @ ½c., .0827c	$585.35
	23*b*. 22,248.83 cubic yds. haul, 1,655 feet over 200 ft., @ 1¼c., .2068c	4,601.05
24.	918.13 sq. yds. sodding, @ 50c	459.06
25.	1,219 lin. ft. 15″ pipe and laying, @ $1.33	1,621.27
26.	3 manholes, 8′–10′ deep, @ $52.80	158.40
27.	9 manholes, 10′–12′ deep, @ $63.36	570.24
28.	2 manholes, 12′–14′ deep, @ $73.92	147.84
29.	2 manholes, 14′–16′ deep, @ $84.48	168.96
30.	1 manhole, 16′–18′ deep	95.04
31.	Additional on 1,630.14 cubic yds. excavation over 16 ft. deep	233.15
32.	8 receiving basins, @ $138.80	1,110.40
33.	2 receiving basins and traps, @ $145.38	290.76
34.	1,103 lin. ft. 36″ sewer, 168,851 bricks, @ $23 per M	3,883.57
36.	4,555.54 cubic yds. excavation, @ 40c	1,822.21
37.	159 lin. ft. 12″ gutter flag, @ 88c	139.92
38.	9 lin. ft. 18″ gutter flag, @ $1.62	14.58
39.	609 lin. ft. 6″ gutter flag, @ 36c	219.20
40.	34 lin. ft. 15 x 6 connections, @ $1.80	61.20
		$57,366.75

XVI.

The claimant also did the following work by order of the Board of Public Works, but not under written contract, admitted by defendant to be correct and of which defendant received the full benefit:

	441.33 sq. yds. brick pavement laid, @ $1	$441.33
	301.5 lin. ft. 5″ b. s. curb, @ $1.20	361.80
	119 cub. yds. grading, @ 30c	35.70
	119 cub. yds. hauled 1,320 ft. over 200 ft., @ 16½c	19.63
27	3 lin. ft. 15″ pipe and laying, @ $1.33	3.99
	24 lin. ft. 6″ pipe and laying, @ 36c	8.64
	3 lin. ft. 18″ pipe and laying, @ $1.62	4.86
	2 manholes, 10′–12′ deep, @ $63.36	126.72
	1 manhole, 18′–20′ deep	105.60
	462.9 lin. ft. 36″ brick sewer, 80,081.7 brick, @ $23 per M	1,841.88
	2,009.39 cub. yds. excavation, @ 40c	803.75
	Additional for 955.57 cub. yds. excavation over 16 ft. deep, @ 37c	353.56
	9 yds. hauled, @ 1¼c	19.63
	9 yds. hauled, @ ½c	7.85
		$4,095.68

XVII.

Said Barnes also, in pursuance of his several contracts with the defendants and the several extensions thereof, dressed and joined old curb to amount in value, at regular prices, of $2,643.48, as stated in the first paragraph of his amended petition filed and allowed April 14, 1887. Conceded by defendant.

XVIII.

The claimant has received payments on account of the work herein elsewhere mentioned aggregating	$178,949.57
And materials of the value of	22,748.11
	$201,697.68

XIX.

That the claimant is entitled for work and labor done and materials furnished on his unsettled accounts the sums of, viz:

28 North Carolina avenue	$62,706.91
C street	11,894.33
D street	30,670.68
E street	19,038.62
Third street	57,366.75
M street	50,285.01
I and Second streets	4,095.68
Jointing curb	2,043.48
	$238,701.46
On which he has been paid in 3.65 bonds and materials	201,697.68
Leaving balance due and payable March 14, 1876	$36,003.78

And the petitioner claims $36,003.78 as of a debt due and payable March 14, 1876.

ELIAS E. BARNES.

JOHN W. DOUGLASS,
Attorney of Record.

DISTRICT OF COLUMBIA, *ss:*

Elias E. Barnes, being duly sworn, says he has heard read the foregoing petition by him subscribed and knows the contents thereof, and that the matters and things therein set forth of his own knowledge are true, and those stated upon information and belief he believes to be true.

E. E. BARNES.

Sworn and subscribed before me this 5th day of March, 1902.

ISAAC C. SLATER,
Notary Public.

29 XII.—*Findings of fact and conclusions of law filed by the court March 31, 1902.*

ELIAS E. BARNES
v.
THE DISTRICT OF COLUMBIA.

This case having been heard before the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

Prior to April 29, 1872, the board of public works of the District of Columbia had, by order entered on their records, fixed the price of certain work to be done in the improvement of the streets in the city of Washington, among which were the following:

"For grading from and after January 22, 1872, 30 cents per cubic yard, including the hauling of the earth excavated not to exceed 200 feet; and for each 200 feet hauled beyond the first 200 feet 1 cent additional per cubic yard.

"For grading old graveled streets to a depth of 2 feet, 40 cents per cubic yard."

And on said April 29, 1872, the said board, as shown by their records, awarded to the claimant herein at the rate so fixed, among others, a contract of which the claimant was notified in writing about which there is no controversy, and the contract clerk of said board was directed to prepare the contract accordingly.

The said clerk prepared a contract designated as Contract No. 264, which was executed by the parties in these words:

"CONTRACT NO. 264.

"This contract, made and concluded this twenty-ninth day of April, in the year one thousand eight hundred and seventy-two, by the board of public works of the District of Columbia, of the first part, and Elias E. Barnes, of Washington, D. C., of the second part, witnesseth:

"First. That the said party of the second part has agreed, and by these presents doth agree, with the said party of the first part, for the consideration hereinafter mentioned and contained, and under the penalty expressed in a bond bearing even date with these presents and hereunto annexed—

"To furnish at his own proper cost and expense all the necessary materials and labor, and in a good, firm, and substantial manner to
30 grade D street south from Fourth street east to New Jersey avenue, in the city of Washington, D. C.; also to grade North Carolina avenue from Fourth street east to New Jersey avenue, in the city of Washington, D. C.

"Also to construct, with the necessary manholes, an eighteen (18) inch pipe sewer from Providence Hospital, at the corner of said D and Second streets SE., through the Government reservation at the intersection of D street SE. and North Carolina avenue, to the main sewer on

said D street SE.; also, so soon as the connections of said sewer, as above, are made and completed, to take up and remove the old brick sewer now down and through said Government reservation, the work of said grading and sewering to be executed, in every respect, in conformity with the specifications following, to wit:

* * * * * * *

"Second. It is further agreed that the said party of the first part shall appoint, from time to time, such person or persons as may be by said party deemed proper, to inspect the material to be furnished and the work to be done under this contract, and that such person or persons shall have any and all opportunity and privileges which may be necessary to enable them to faithfully make the inspection aforesaid.

"Third. It is further agreed that the work under this contract shall be commenced on or before the fourth day of May, one thousand eight hundred and seventy-two.

"Fourth. It is further agreed that the said party of the first part may, on notice to the party of the second part, suspend work under this contract; but if not suspended it shall be completed within ninety days from the date fixed for its commencement, and that the said work shall not be sublet without the consent in writing of the said party of the first part. And any subletting or assignment without such consent shall work a forfeiture of this contract.

* * * * * * *

"Sixth. It is further agreed that all loss or damage arising out of the nature of the work to be done under this agreement, or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from incumbrances to individuals, property, or otherwise, on the line of the work, or adjacent thereto, shall be sustained by the said contractor.

* * * * * * *

"Eighth. And it is further agreed that partial payments shall be made by the duly authorized financial agent of the said party of the first part on the monthly estimates of the chief engineer of the board of public works aforesaid, and that whenever the said chief engineer aforesaid shall certify, in writing, that the party of the second part completely performed this contract on his part, and shall submit, with said certificate, his estimate of the amount due the party of the second part, then, within thirty days, as hereinafter provided, the said party of the second part shall be entitled to receive the full amount due under this contract, deducting therefrom all previous partial payments which may have been made, as hereinafter mentioned.

"And it is further expressly agreed that no money shall become due and payable under this contract except upon the certificate of said engineer, as hereinbefore provided; and the said party of the second part further agrees that he shall not be entitled to demand or receive
31 payment for any portion of the aforesaid work except in the manner set forth in this agreement; and when each and all of the stipulations hereinbefore mentioned are complied with, and the engineer shall have given his certificate to that effect, a final settlement shall be made in writing between the parties, and the whole amount found due the party of the second part under this contract shall be paid to him,

excepting such sum or sums as may be retained under any provision of this contract; provided that partial payments may be made, under direction of the board, otherwise than upon the estimates of the engineer, as provided above, if, in the opinion of the board, the vigorous prosecution of the work will be promoted thereby.

* * * * * * *

"Tenth. It is further agreed that the said party of the second part shall receive the following prices as full compensation for furnishing all the materials and labor which may be required in the prosecution of the whole of the work to be done under this agreement, and in all respects completing the same, to wit:

"Grading, thirty (30) cents for each and every cubic yard of earth, sand, or gravel excavated and hauled a distance not exceeding two hundred (200) feet, and one cent additional per cubic yard for every two hundred (200) feet beyond the above.

"Eighteen (18) inch pipe, per lin. ft., $1.62.

Manholes:	
6 ft. deep or under	$31.68
Over 6 ft. deep and not more than 8 ft. deep	42.24
" 8 " " " " " " 10 " "	52.80
" 10 " " " " " " 12 " "	63.36
" 12 " "	73.92

"Excavation and refilling, forty (40) cents per cubic yard, to be measured in excavation only.

"Taking up and removing old brick sewer.

"Which said sums or prices the said party of the first part shall pay to the said party of the second part as herein provided.

"Eleventh. It is further agreed that the measurements shall be made by the engineer of the board or his assistants. * * *

"In witness whereof, &c. * * *"

II.

That by mistake in the drafting of said contract the rate of 40 cents for grading old gravel streets to a depth of 2 feet was omitted therefrom; that said board of public works and said claimant, by mutual mistake, executed said contract without observing said omission.

III.

That under and pursuant to said contract the claimant excavated on North Carolina avenue, to bring said street to the then established grade, 32,739 cubic yards, and on D street—both in said city—about 4,267 cubic yards of excavation, which work was completed about August 22, 1872.

IV.

In September, 1873, the board of public works increased the price for hauling earth from 1 cent per cubic yard for 200 feet to 1¼ cents
32 per cubic yard for 100 feet of hauling beyond the first 200 feet, and made said rate applicable to all work done after January 1, 1873.

V.

Thereafter, in 1874, the Commissioners of the District of Columbia established a new grade for North Carolina avenue and directed the claimant to further excavate said street, in order to conform the same to the newly established grade, with the understanding and agreement, verbally made, that the claimant should be paid therefor the then existing board rates in certificates, convertible into bonds of the District of Columbia bearing interest at the rate of 3.65 per cent.

VI.

That subsequent to the execution of said contract No. 264, set forth in the first finding herein, said claimant entered into other contracts with the board of public works and the Commissioners of said District, the first of which was effected by said board and the residue by the Commissioners, designated as extensions of said contract No. 264, in these words:

"FIRST EXTENSION OF CONTRACT 264

"*By and between board of public works and said Barnes.*

"It is hereby agreed that this contract, with its various terms, conditions, and stipulations (except as respects the time of execution), shall be extended so as to embrace the setting of curbstones and the laying and putting down of brick foot pavements on North Carolina avenue, between New Jersey avenue and Fourth street SE., in the city of Washington, D. C.

"Also the setting the curbstones and the laying and putting down of the brick foot pavements on D street SE., between New Jersey avenue and Fourth street SE., in the city of Washington, D. C.

"Also the gravelling of said D street SE., between Sixth and Seventh streets SE., in the city of Washington, D. C.

"Also the gravelling of the carriageway of North Carolina avenue from Pennsylvania avenue to New Jersey avenue, in the city of Washington, D. C.

"Also the grading, the setting of curbstones, and the laying and putting down of the brick foot pavements on D street SE. from Fourth to Sixth street SE., and the terracing of said D street SE. from Second to Fourth street SE., in the city of Washington, D. C.

"Also the grading of E street SE. from Second to Sixth streets SE., in the city of Washington, D. C.

"The said work to be paid for at board rates for said work, and to be begun and completed immediately, and said work to be executed in every respect in conformity with the accompanying specifications.

"Witness our hands and seals the twenty-first day of May, A. D. 1873."

33 "SECOND EXTENSION OF CONTRACT NO. 264.

"For and in consideration of the stipulations hereinafter contained it is agreed by and between the Commissioners of the District of Columbia and Elias E. Barnes that contract No. 264 in the series of contracts made by the board of public works of the District of Columbia

be, and the same is hereby, extended, with its various terms, conditions, and stipulations, to embrace the following work, viz:

"Grade M street south, between 3d street east and James Creek Canal.

"It is further agreed that the said lias E. Barnes shall receive the prices established and paid by the board of public works for work of similar character, provided that payment be made in the bonds issued by the sinking fund commissioners of the District of Columbia under and by virtue of section 7 of the act of Congress approved June 20, 1874, which bonds shall be accepted and received at their par value.

"It is further agreed that the work herein specified shall be completed by the first day of November, 1875, under penalty of forfeiture of all right and title to perform the same.

"In witness whereof the Commissioners of the District of Columbia, successors to the board of public works, appointed under the act of Congress entitled 'An act for the government of the District of Columbia, and for other purposes,' approved June 20, 1874, and the party of the second part to these presents have hereunto set their hands and seals this 19th day of June, 1875."

"THIRD EXTENSION OF CONTRACT No. 264.

"For and in consideration of the stipulations hereinafter contained, it is agreed by and between the Commissioners of the District of Columbia and Elias E. Barnes that contract No. 264 in a series of contracts made by the board of public works of the District of Columbia be, and the same is hereby, extended, with its various terms, conditions, and stipulations, to embrace the following work, to wit:

"Replace all suitable old material on E street south, between 2nd and 6th streets east.

"It is further agreed that the work herein specified shall be completed by the 30 day of Dec., 1875, under penalty of forfeiture of all right and title to perform the same.

"It is further agreed that the said Elias E. Barnes shall receive the prices established and paid by the board of public works for work of similar character; provided, that payment be made in the bonds issued by the sinking fund commissioners of the District of Columbia under and by virtue of section 7 of the act of Congress approved June 20, 1874, which bonds shall be accepted and received at their par value.

"In witness whereof the Commissioners of the District of Columbia, successors of the late board of public works, appointed under the act of Congress entitled 'An act for the government of the District of Columbia and for other purposes,' approved June 20, 1874, and the party of the second part to these presents has hereunto set his hands and seal this 21st day of December, 1875."

34 VII.

That after the change of grade of North Carolina avenue, as aforesaid, the claimant excavated 64,573.6 cubic yards, measured by the engineer officers of said District March and December, 1875, and January, 1876, for which excavation, according to the verbal agreement with the Commissioners aforesaid, the claimant was to receive the rate

so established and paid by the board of public works, including 1¼ cents per cubic yard for every 100 feet of excavation hauled beyond the first 200 feet, which was to be paid in bonds of the District of Columbia as aforesaid.

VIII.

That subsequent to the execution of said contract No. 264, and before the Commissioners of said District had directed the claimant to proceed to a further excavation of North Carolina avenue to bring it to the new grade so established by said Commissioners, the board of public works had established by payment to several contractors, i. e., four or five, for like work, the rate of 60 cents per cubic yard for stiff-clay excavation, which the court finds was a reasonable price therefor.

IX.

That under said contract No. 264 and the extensions thereof, and as re-formed by the insertion of the omitted rate for old gravel streets and the additional for clay excavation, and the extra work performed under the verbal agreement of the Commissioners of said District as aforesaid, which work was accepted by said Commissioners and the District received the benefit thereof, the claimant performed the following work:

North Carolina avenue.—Contract 264.

1.	2,318 lin. ft. 12-inch gutter flag laid, at 35c	$811.30
2.	533 lin. ft. 16-inch gutter flag laid, at 48c	255.84
3.	17.7 ft. 5-inch granite curb laid, at $2.05	36.28
4.	14.1 ft. 5-inch circular curb, Gleason pattern, at $2.05	28.90
5.	64 cubic yards sewer excavation, at 40c	25.60
6.	90 ft. 12-inch pipe laid, at 88c	79.20
7.	1 trap	157.58
8.	3,972.34 square yards graveling, at 15c	595.85
9.	3,008.92 square yards brick pavement, at $1	3,008.92
10.	1,376 square yards cobble pavement, at 70c	963.20
11.	1,210 ft. 16-inch flagging for crossings, laid, at 60c	726.00
12.	1,889.3 ft. 5-inch new curb and setting, at $1.20	2,267.16
13.	32,793 cub. yards excavation, per meas. Aug. 9, 1872, at 30c., to established grade	9,837.90
14.	Haul on same, at ½c. per 100 ft. 1,100 ft., at 5½c	1,803.61
15.	20,438 cub. yds. excavation, per meas. Mar. 27, 1875, at 30c., between Coyle grade and new grade	6,131.40
16.	3,854 cub. yds. haul 300 ft., at 1½c. per 100 ft., at 3⅜c	144.52
17.	16,584 cub. yds. haul 1,100 ft., at 13⅜c., at 1½c. per 100 ft	2,280.30
18.	10,585.6 cub. yds. excavation, per meas. Dec. 2, 1875, at 30c. per cub. yd., between Coyle grade and new grade	3,175.68
19.	Haul on 10,585.6 cub. yds., 1,550 ft., at .1937c., at 1½c. per 100 ft	2,050.43
20.	33,550 cub. yds. excavation, per meas. Jan. 22, 1876, at 30c. per cub. yd., between Coyle grade and new grade	10,065.00
35 21.	Haul on 33,550 cub. yds., 1,550 ft., at .1937c., at 1¼ c. per 100 ft.	6,498.63
22.	775.5 lin. ft. 5-inch curb, at $1.20	930.60
23.	1,077.78 square yards brick pavement, at $1.00	1,077.78
24.	2,160 square yards graveling, at 15c	324.00
25.	750 ft. blind drain, at $1.00	750.00
26.	Additional stiff-clay excavation, 23,704 cub. yds., at 30c. (done after 1874)	7,111.20
27.	Excavation under sidewalks, viz, 10 inches depth under 4,086.70 sq. yds. brick pavement, 1,135.19 cub. yds., at 30c	340.55
	2,044.11 cub. yds. excavation under carriageway, 12 inches depth, under 6,132.34 sq. yds. graveling, at 30c	613.23
	Haul on above 3,179.30 cub. yds., 1,550 ft., at .1937c	615.83
	Total	62,706.49

The excavation, as well as the rate of 1¼ cents per haul therefor mentioned in items 15 to 21, both inclusive, and item 27 were for work done under the verbal agreement with the Commissioners of said District as aforesaid, as was also the additional or clay excavation mentioned in item 26. The excavation mentioned in item 27 is not included in either of the measurements mentioned in items 13, 15, 18, or 20.

D street SE.—Contract 264.

1.	4,667.11 sq. yds. brick pavement laid, at $1	$4,667.11
2.	5,219 cub. yds. excavation, at 40c., meas. of Dec. 14, 1876, between 2d and 6th sts	2,087.60
3.	19,471 cub. yds. excavation, at 30c., meas. of Dec. 4, 1876, between 2d and 6th sts	5,841.30
4.	Haul of 2,238 cub. yds. excavation between original surface and established grade, 2,358 feet, at ½c. per 100 feet, .1179c	263.86
5.	Haul of 20,752 cub. yds. excavation between established grade and new grade, 2,358 feet, at 1¼c. per 100 ft., .2947c., as per agreement with Commissioners	6,115.61
6.	1,345 sq. yds. sodding, at 50c	672.50
7.	4,266.45 lin. ft. 5″ b. s. curb and setting, at $1.20	5,119.74
8.	435 lin. ft. 6″ granite curb and setting, at $1.42	617.70
9.	41.4 lin. ft. granite cir. curb and setting, at $2.05	84.87
10.	932.4 sq. yds. cobblestone pavement laid, at 70c	652.68
11.	3,735.6 sq. yds. graveling, at 15c	560.34
12.	—— ft. g. granite corners, at $2.05	67.44
13.	1,133 lin. ft. 12″ sewer and laying, at 88c	997.04
14.	274 lin. ft. 15″ sewer and laying, at $1.33	364.42
15.	819 lin. ft. 6″ sewer and laying, at 36c	294.84
16.	111 lin. ft. 12″ x 6″ connections, at $1.38	153.18
17.	30 lin. ft. 15″ x 6″ connections, at $1.80	54.00
18.	2 manholes, 6′ to 8′ deep, at $42.24	84.48
19.	5 manholes, 8′ to 10′ deep, at $52.80	264.00
20.	4 manholes, 10′ to 12′ deep, at $63.36	253.44
21.	1 receiving basin, new pattern	157.58
22.	2 receiving basins	315.16
	2 receiving basins, old pattern, reset, at $37.00	74.00
23.	1,450.50 cub. yds. excavation, at 40c., under extension	580.20
24.	90 lin. ft. 12″ sewer and laying, at 88c	79.20
25.	70.5 cub. yds. excavation, at 40c., under extension	28.20
26.	2,561 ft. 12″ gutter flag laid, at 35c	896.35
27.	456 ft. 16″ bridging, at 60c	273.60
		31,620.44

The total excavation, according to the final measurement, was.... 24,690 cub. yds.
On 1,700 cub. yds. no haul was allowed, presumably because it was hauled less than 200 feet ..... 22,990—2,358 ft.
1,700—no haul.
24,690

36 *E street SE.—No change.—E street—Contract 264.*

1.	4,981.88 cub. yds. grading, at 40c	$1,992.75
2.	24,229.62 cub. yds. grading, at 30c	7,268.89
3.	24,824.40 cub. yds. haul 1,134 ft. over 200 ft., at 1¼c	3,517.62
4.	4,387.10 cub. yds. haul 2,800 ft. over 200 ft., at 1¼c	1,535.48
5.	1,602.22 sq. yds. brick pavement laid, at $1.00	1,602.22
6.	37 sq. yds. cobble-stone pavement laid, at 70c	25.90
7.	1,227 lin. ft. 5″ b. s. curb and setting, at $1.20	1,472.40
8.	14 1 lin. ft. granite cir. curb and setting, at $2.05	28.91
9.	24 running ft. gutter flag laid, at 35c	8.40
10.	136 running ft. gutter flag laid, at 48c	65.28
11.	2,114 cub. yds. grading, at 30c	634.20
12.	2,114 cub. yds. haul 2,626 ft. over 200 ft., at 1¼c	693.81

13. Sewer work on E, viz:	
14. 104 lin. ft. 12″ sewer pipe, at 88c	$91.52
15. 48 lin. ft. 6″ sewer pipe, at 36c	17.28
16. 6 lin. ft. 12″ x 6″ connections, at $1.38	8.28
17. 1 manhole 7′ deep	42.24
18. 83.6 cub. yds. excavation, at 40c	33.44
	19,038.62

X.

On July 23, 1872, the board of public works awarded to the claimant another contract, designated as contract No. 413, in these words:

"CONTRACT No. 413.

"This contract, made and concluded this twenty-third day of July, in the year one thousand eight hundred and seventy-two, by and between * * * the board of public works of the District of Columbia, of the first part, and Elias E. Barnes, of Washington, D. C., of the second part, witnesseth:

"First, that the said party of the second part has agreed, and by these presents doth agree, with the said party of the first part, for the consideration hereinafter mentioned and contained, and under the penalty expressed in a bond bearing even date with these presents, and hereunto annexed, to furnish, at his own proper cost and expense, all the necessary materials and labor, and, in a good, firm, and substantial manner to grade, set the curbstones, and lay and put down the brick foot pavements on Second street east, between Maryland and Virginia avenues; on Third street east, between Maryland and Virginia avenues, and on Fourth street east, between Maryland and Virginia avenues, and on Fourth street east, between Maryland and Pennsylvania avenues, in the city of Washington, D. C. Also to construct a fifteen (15′) inch pipe sewer on the west side of said Second street east, between East Capitol street and Pennsylvania avenue, with the necessary manholes and traps; the work of said grading, curbing, brick paving, and sewering to be done and completed in accordance with the specifications following, to wit:

* * * * * * *

"Sixth and eighth. [Same as sixth and eighth in contract No. 264.]

* * * * * * *

"Tenth. It is further agreed that the said party of the second part shall receive the following prices as full compensation for furnishing all the materials and labor which may be required in the prosecution
37 of the whole of the work to be done under this agreement, and in all respects completing the same, to wit:

"Grading, thirty (30) cents per cubic yards, including the first two hundred (200) feet of hauling.

"For every additional two hundred (200) feet of hauling per cubic yard, one (1) cent.

"Setting curbstones (new 8″) per lin. ft., forty (40) cents.
" " (" 6″) " " " thirty (30) "
" " (" 5″) " " " twenty-five (25) cents.
"Resetting " (old 4″) " " " fifteen (15) cents.

"Laying brick pavement, new, per sq. y'd, eighty (80) cents.
"Relaying brick pavement, old, per sq. y'd, twenty-five (25) cents.
"Provided, that bricks shall be furnished by the board at a price not exceeding eleven dollars and fifty ($11.50) cents per thousand.
"Fifteen (15″) inch pipe per lin. ft., $1.33.
"Six (6″) inch pipe " " " thirty-six (36) cents.

Manholes—	
6 feet deep or under	$31.68
Over 6 feet deep and more than 8 feet	42.24
" 8 " " " " " 10 "	52.80
" 10 " " " " " 12 "	63.36
" 12 " "	73.92
Traps—	
Old corporation patterns	145.38
Chase's pattern	114.58

"Which said sums or prices the said party of the first part shall pay to the said party of the second part, as herein provided.
"Eleventh. It is further agreed that the measurements shall be made by the engineer of the said party of the first part, or his assistants."
At the time said contract was awarded the contract clerk of said board notified the claimant in writing, about which there is no controversy, that said contract had been awarded to him at board rates, but the court finds that the evidence fails to show that the board awarded said contract at said rates, or at any other rates than those set forth in the contract aforesaid, or that any mistake was made in the omission therefrom of the rate for old gravel streets.

XI.

That subsequent to the execution of said contract No. 413 the claimant entered into other contracts with the Commissioners of said District, known as extensions thereof, in these words:

"First Extension of Contract No. 413.

"For and in consideration of the stipulations hereinafter contained it is agreed by and between the Commissioners of the District of Columbia and Elias E. Barnes that contract No. 413 in the series of contracts made by the board of public works of the District of Columbia be, and the same is hereby, extended with its various terms, conditions, and stipulations to embrace the following work, to wit:
"Grade 3d street east, between Virginia avenue and Eastern Branch; N street south, between 2nd and 4th streets east; M street south, between 2nd and 4th street east, and reset the curbs and relay the
38 brick foot-pavements on said streets where ordered by the engineer of the D. C.
"It is further agreed that the said Elias E. Barnes shall receive the price established and paid by the board of public works for work of similar character, provided payment shall be made in the bonds issued by the sinking-fund commissioners of the District of Columbia under and by virtue of section 7 of the act of Congress approved June 20, 1874, which bonds shall be accepted and received at their par value. * * *

"In witness whereof the said District of Columbia has caused this instrument to be signed by the Commissioners of said District, appointed under the act of Congress entitled 'An act for the government of the District of Colnmbia, and for other purposes,' approved June 20, 1874, and the common seal of said District to be hereto affixed, and the party of the second part to these presents has hereunto set his hand and seal this 20th day of May, 1875."

"SECOND EXTENSION OF CONTRACT NO. 413.

"(Memorandum in red ink:) Cancelled so far as relates to cobblestone pavement on M st. south, bet. S. Cap. st. and 4½ street west, and bet. New Jersey ave. and 4th street east. (See extension same No. 413.)

"For and in consideration of the stipulations hereinafter contained, it is agreed by and between the Commissioners of the District of Columbia and Elias E. Barnes that contract No. 413, in the series of contracts made by the board of public works of the District of Columbia, be, and the same is hereby, extended with its various terms, conditions, and stipulations to embrace the following work, to wit:

"Set the curbs and lay the brick sidewalks on M street south, between 2nd street west and 4th street east, according to specifications.

"Also grade, set the curbs, lay the brick pavements, and lay and put down the 12-inch sewers where ordered on C street south, from 2nd street east to South Capitol street, according to specifications. All suitable old material to be replaced.

"Also lay cobblestone pavement on M street south, between 4½ street west and 4th street east.

"It is further agreed that the work specified to be done under this agreement shall be completed by the 1st day of November, 1875; and if not so completed by said date the party of the second part hereto shall forfeit all right and title to perform the work herein described.

"It is further agreed that the said Elias E. Barnes shall receive the prices established and paid by the board of public works of the District of Columbia for work of similar character; provided that payment be made in the bonds issued by the sinking-fund commissioners of the District of Columbia under and by virtue of section 7 of the act of Congress approved June 20, 1874, which bonds shall be accepted and received at their par value. * * *

"In witness whereof the Commissioners of the District of Columbia, successors to the board of public works, appointed under the act of Congress entitled 'An act for the government of the District of Columbia, and for other purposes,' approved June 20, 1874, and the party of the second part to these presents have hereunto set their hands and seals this 19th day of August, 1875."

39 "THIRD EXTENSION OF CONTRACT NO. 413.

"For and in consideration of the stipulations hereinafter contained, it is agreed by and between the Commissioners of the District of Columbia and Elias E. Barnes that contract No. 413, in the series of contracts made by the board of public works of the District of Columbia, be, and the same is hereby, extended with its various terms, conditions, and stip-

ulations, to embrace the following work according to specifications hereunto annexed, to wit:

"Lay and put down Belgian granite block pavement on the carriageway of 3d street east, between D street south and Virginia avenue, and the blue-rock pavement on 3d street east, between Virgina avenue and N street south, and gravel the roadway of D street south, between New Jersey avenue and 6th street east; grade and relay the old material on C street south, between 2d and 3d streets east. Also grade, set the curbs, and lay brick pavements on D street south, between New Jersey avenue and South Capitol street.

"It is further agreed that the work specified herein shall be completed by the 30th day of November, 1875, under penalty of forfeiture of all right and title to perform the same.

"It is further agreed that the said Elias E. Barnes shall receive the prices established and paid by the board of public works for work of similar character: Provided, That payment be made in the bonds issued by the sinking-fund commissioners of the District of Columbia under and by virtue of section 7 of the act of Congress, approved June 20, 1874, which bonds shall be accepted and received at their par value.

* * * * * * *

"In witness whereof the Commissioners of the District of Columbia, successors to the late board of public works, appointed under the act of Congress entitled 'An act for the government of the District of Columbia, and for other purposes,' approved June 20, 1874, and the party of the second part to these presents has hereunto set his hand and seal this 12th day of Nov., 1875."

"FOURTH EXTENSION OF CONTRACT NO. 413.

"For and in consideration of the stipulations hereinafter contained, it is agreed by and between the Commissioners of the District of Columbia and "Elias E. Barnes," that contract No. 413, in the series of contracts made by the board of public works of the District of Columbia be, and the same is hereby, extended, with its various terms, conditions, and stipulations, to embrace the following work, to wit:

"Lay and put down bluestone pavement on the carriage way of M street south, between South Capitol street and 4½ street west, and between New Jersey avenue and Fourth street east (this work is in lieu of cobblestone pavement on said street between the points named).

"It is further agreed that the work herein specified shall be completed by the 30th day of December, 1875, under penalty of forfeiture of all right and title to perform the same.

"It is further agreed that the said Elias E. Barnes shall receive the prices established and paid by the board of public works for work of similar character: Provided, That payment be made in the bonds issued by the sinking-fund commissioners of the District of Columbia under and by virtue of section 7 of the act of Congress approved June 20, 1874, which bonds shall be accepted and received at their par value.

* * * * * * *

"In witness whereof the Commissioners of the District of Columbia, successors to the late board of public works, etc., etc."

XII.

Under said contract 413 and the several extensions thereof set forth in the preceding finding, the claimant performed the following work on C street southeast and M street southwest at the prices hereinafter named—that is to say:

C street SE.—Contract 413.

1.	2,847.40 sq. yds. brick pavement laid, at $1	$2,847.40
2.	8.33 sq. yds. old brick pavement relaid, at 25c	2.08
3.	865.67 sq. yds. cobblestone pavement laid, at 70c	605.96
4.	2,141 lin. ft. 5″ b. s. curb and setting, at $1.20	2,569.20
5.	34.5 lin. ft. 5″ curb reset, at 25c	8.62
6.	10.5 lin. ft. 6″ curb reset, at 30c	3.15
7.	21.35 lin. ft. 6″ granite cir. curb and setting, at $2.05	43.77
8.	6.25 lin. ft. 6″ granife cir. curb reset, at 30c	1.87
9.	2,191 running ft. 12″ gutter flag laid, at 35c	766.85
10.	207 running ft. 16″ gutter flag laid, at 48c	99.36
11.	2,848.6 cub. yds. grading, at 40c	1,139.44
12.	4,469.6 cub. yds. grading, at 30c	1,340.88
13.	7,318.2 cub. yds. haul, 1,220 ft. over 200 ft., at 1¼c.=0.1525	1,116.02
14.	3,060 sq. ft. graveling, per yd. 15c	459.00
15.	1,326 ft. b. s. curb redressed, at 20c	265.20
16.	Sewer work, Second to Third st., viz:	
	298 lin. ft. 12″ sewer pipe and laying, at 88c	262.24
	21 lin. ft. 6″ sewer pipe and laying, at 36c	7.56
	30 lin. ft. 12″ x 6″ connection pipe and laying, at $1.38	41.40
	3 manholes 10′ to 12′ deep, at $63.36	190.08
	310.72 cub. yds. of excavation, at 40c	124.29
		11,894.37

M street SW.—Contract 413.

1.	3,406 sq. ft. 16-in. crossing laid, at 60c	$2,043.60
2.	6,747.10 sq. yds. brick pavement laid, at $1	6,747.10
3.	5,723.78 sq. yds. cobblestone pavement laid, at 70c	4,006.64
4.	6,401 lin. ft. 5″ b. s. curb and setting, at $1.20	7,681.20
5.	65.8 lin. ft. granite cir. curb, Gleason pattern, at $2.05	134.89
6.	101 lin. ft. granite cir. curb and setting, at $2.05	207.05
7.	6,025 running ft. 12″ gutter flag laid, at 35c	2,108.75
8.	1,481 running ft. 16 in. new gutter flag laid, at 48c	710.88
9.	19,849 cub. yds. grading, at 30c	5,954.70
10.	9,867 cub. yds. grading, at 40c	3,946.80
11.	29,716 cub. yds. haul 736 ft. over 200 ft., at .092	2,733.87
12.	6,973.23 sq. yds. blue-rock pavement laid, at $1.75 per yd	12,203.15
13.	4,097 cub. yds. grading, at 30c	1,229.10
14.	4,097 cub. yds. extra haul, at 1¼c	376.92
		50,084.65

XIII.

At the time of the award of said contract 413 the established grade of Third street between Pennsylvania avenue and Virginia avenue
41 required the excavation of 7,078 cubic yards of earth, which was completed in 1873.

That by reason of the change of grade of North Carolina avenue by the Commissioners in 1874, as hereinbefore set forth, it became necessary to further grade said Third street to conform to the new grade so established; and under the terms of said contract 413 and the extensions thereof, and by the direction of said Commissioners, and with the agreement and understanding that said Commissioners would pay him

the board rates for the extra excavation and for the haul in 3.65 per cent bonds of said District, as set forth in finding 5, the claimant performed the following work on Third street, to wit:

Third street.—Contract 413.

1.	5,030.5 sq. yds. Belgian pavement laid, at $3.50	$17,606.75
2.	See item 4.	
3.	198.8 sq. yds. cobblestone, at 70c	139.16
4.	747.4 sq. ft. flag crossing, at 60c	448.44
5.	122 running ft. 12″ gutter flag, at 35c	42.70
6.	1,956 cubic yds. grading, at 30c	586.80
7.	1,000 cubic yds. haul, 2,900 ft. over 200 ft., at 1¼c. per 100 ft	362.50
8.	1,802 cubic yds. grading, at 30c	540.60
9.	3,734 cubic yds. grading, at 40c	1,493.60
10.	5,536 cubic yds. haul, 1,412 ft. over 200, at 1¼c	977.10
11.	Lowering and repairs of water mains	399.30
12.	4,521.82 sq. yds. brick pavement laid, at $1	4,521.82
13.	2,815 running ft. 5″ b. s. curb and setting, at $1.20	3,378.00
14.	713 running ft. 6″ b. s. curb and setting, at $1.42	1,012.46
15.	4 running ft. 6″ granite circular curb set, at $1.42	5.68
16.	18.6 running ft. 6″ granite circular curb reset, at 30c	5.58
17.	32.3 running ft. 6″ granite circular curb set, at $2.05	66.20
18.	3 running ft. 6″ b. s. circular curb set, at $2.05	6.15
19.	6.75 running ft. 4″ b. s. circular curb set, at $2.05	13.83
20.	288 running ft. 5″ b. s. circular curb reset, at 25c	72.00
21.	22,248.83 cubic yds. excavation, at 30c	6,674.64
22.	7,078 cubic yds. excavation, at 30c	2,123.40
23.	7,078 cubic yds. haul, 1,655 feet over 200 ft., at ¼c., .0827c	585.35
24.	22,248.83 cubic yds. haul, 1,655 feet over 200 ft., at 1¼c., .2068c	4,601.05
25.	918.13 sq. yds. sodding, at 50c	459.06
26.	1,219 lin. ft. 15″ pipe and laying, at $1.33	1,621.27
27.	3 manholes, 8′–10′ deep, at $52.80	158.40
28.	9 manholes, 10′–12′ deep, at $63.36	570.24
29.	2 manholes, 12′–14′ deep, at $73.92	147.84
30.	2 manholes, 14′–16′ deep, at $84.48	168.96
31.	1 manhole, 16′–18′ deep	95.04
32.	Additional on 1,630.14 cubic yds. excavation over 16 ft. deep	233.15
33.	8 receiving basins, at $138.80	1,110.40
34.	2 receiving basins and traps, at $145.38	290.76
35.	1,103 lin. ft. 36″ sewer, 168,851 bricks, at $23 per M	3,883.57
36.	4,555.54 cubic yds. excavation, at 40c	1,822.21
37.	159 lin. ft. 12″ gutter flag, at 88c	139.92
38.	9 lin. ft. 18″ gutter flag, at $1.62	14.58
39.	609 lin. ft. 6″ gutter flag, at 36c	219.24
40.	34 lin. ft. 15x6 connections, at $1.80	61.20
	Total	56,658.95

The excavation and haul mentioned in items 21 and 24 were for work done in 1874 and thereafter under the direction and verbal agreement of the Commissioners of said District as aforesaid, which work was accepted by said Commissioners and the District received the benefit thereof.

42 XIV.

The claimant also did the following work by order of the board of public works, but not under written contract admitted by defendant to be correct and of which defendant received the full benefit:

441.33 sq yds. brick pavement laid, at $1	$441.33
301.5 lin. ft. 5″ b. s. curb, at $1.20	361.80
119 cub. yds. grading, at 30c	35.70
119 cub. yds. hauled 1,320 ft. over 200 ft., at 16½c	19.63

3 lin. ft. 15″ pipe and laying, at $1.33	$3.99
24 lin. ft. 6″ pipe and laying, at 36c	8.64
3 lin. ft. 18″ pipe and laying, at $1.62	4.86
2 manholes 10′–12′ deep, at $63.36	126.72
1 manhole 18′–20′ deep	105.60
462.9 lin. ft. 36″ brick sewer, 80,081.7 brick, at $23 per M	1,841.88
2,009.39 cub. yds. excavation, at 40c	803.75
Additional for 955.57 cub. yds. excavation over 16 ft. deep, at 37c	353.56
9 yds. hauled, at 1¼c	19.63
9 yds. hauled, at ½c	7.85
	4,134.94

XV.

Said Barnes also, in pursuance of his several contracts with the defendants and the several extensions thereof, dressed and joined old curb to amount in value, at regular prices, of $2,643.48, as stated in the first paragraph of his amended petition filed and allowed April 14, 1887. Conceded by defendant.

XVI.

The claimant has received payments on account of the work herein elsewhere mentioned aggregating	$178,949.57
And materials of the value of	22,748.11
Also sand of the value conceded	350.00
	202,047.68

XVII.

COUNTERCLAIM.

1. Under said contract 413, for work done after January 1, 1873, but prior to the extra work performed under the verbal agreement between the claimant and the Commissioners of said District as set forth in finding 13, on that part of Second street between Pennsylvania and Maryland avenues included in the original written contract, but not in any extensions thereof, partial measurements were made by the engineer and certified to the auditor, and in the certificate were the following quoted items, among others:

"5,539 cubic yds. grading, 30 cts. per yard;

"9,886 cubic yds. excavation hauled 2,300 feet over 200 ft., at 1 ct. per yard per 200 feet over 200 feet,"

which was the written contract rate.

Partial payment was made by the board of public works in accordance therewith September, 1873.

On final measurement the board of audit restated the whole account March 19, 1875; allowed 40 cents a yard for said grading, which exceeded the amount at written contract rates by $553, and allowed 1¼ 43 cents per yard for said haul per 100 feet over 200 feet, which exceeded the amount at written contract rates by $1,705.33, and payment was made accordingly.

2. Under said contract 413, said Barnes, after January 1, 1873, but before the verbal agreement between him and the Commissioners for the extra work set forth in said finding 13, did other work on Second street, between Pennsylvania and Virginia avenues, included in said original con-

tract and not in any extension thereof. In the certificate of final measurement, made January 9, 1874, the following, among others, appeared:

"8,400 cubic yds. grading, 40 cts., which in amount exceeded that at written contract rates in the sum of $840;

"19,566 cubic yds. excavation hauled 2,400 feet over 200 ft., 1¼ cts. per yard per 100 ft. over 200 ft.;"

which in amount exceeded that at written contract rates by the sum of $3,521.88, and partial payments were made by the board of public works.

Subsequently, March 19, 1875, the board of audit, after deducting the partial payments referred to, made final payment of the balance, in accordance with said statement.

3. Under said contract 413, said Barnes, after January 1, 1873, and prior to the verbal agreement between him and the Commissioners, set forth in said finding 13, did other work on Third street, between Pennsylvania and Maryland avenues, included in the original contract, but not in any extension thereof. Final measurement and certificates were made and paid October 8, 1873, by the board of public works, in which the following quoted items appear, among others:

"7,010 cubic yds. grading, 40 cts. per yard,"

which in amount exceeded that at written contract rates by the sum of $701;

"15,141 cubic yds. excavation hauled 2,400 cubic yards, 1¼ cts. per yard per 100 ft. over 200 ft.,"

which in amount exceeded that at original written contract rates by the sum of $2,725.38.

4. Under said original contract 413, said Barnes, after January 1, 1873, and before the verbal agreement for the extra work between him and the Commissioners, as set forth in said finding 13, did other work on Fourth street east, between Pennsylvania and Maryland avenues, included in the original written contract and not in any extension thereof. Final remeasurement was made and certified October 10, 1873, and the full amount paid in accordance therewith by the board of public works November 12, 1873, in which the following items appear:

"7,000 cubic yds. grading, 40 cts. per yard,"

which in amount exceeded that at written contract rates by the sum of $700;

"10,192 cubic yds. hauled 3,000 feet over 200 feet, 1¼ cents per yard per 100 ft. over 200 ft.,"

which in amount exceeded that at written contract rates by the sum of $2,293.20.

44

XVIII.

ASSIGNMENTS.

November 17, 1877, said Barnes assigned to Samuel J. Ritchie $6,000 of what might be due from the District to said Barnes, and June 28, 1878, he assigned the further sum of $5,000, and January 16, 1879, the further sum of $1,000, aggregating $12,000, as conceded by the parties without controversy.

CONCLUSIONS OF LAW.

Upon the foregoing findings of fact the court decide as conclusions of law:

1. That contract 264 be and the same is hereby re-formed so as to incorporate therein the rate of 40 cents per cubic yard for old gravel streets to a depth of 2 feet, to conform to the intention of the parties as set forth in finding 2.

2. That by reason of the facts set forth in finding 10 the claimant is not entitled to a re-formation of contract 413 in respect to said rate for old gravel streets.

3. That the claimant is entitled to be allowed on findings 9, 12, 13, 14, and 15 the sum of $238,781.94, less the sum of $202,047.68 heretofore paid said claimant, leaving a balance in his favor of $36,734.26.

4. The defendants must be allowed for the overpayments above those agreed upon in the written contracts as stated in finding 17 the sum of $13,039.79.

5. On the whole case, after deducting the one from the other sum, the claimant is entitled to judgment against the defendants for the difference, being $23,694.47, due and payable March 1, 1876, of which sum there shall be paid to said Samuel J. Ritchie, assignee as aforesaid, as agreed by said claimant, and which is hereby ordered, the sum of $12,000.

XIII.—*Opinion of the court.*

PEELLE, J., delivered the opinion of the court:

This action is founded upon the act June 22, 1880 (1 Supp. Rev. Stat., 562), known as the District of Columbia claims act, and grows out of two written contracts, Nos. 264 and 413, entered into by the claimant with the board of public works of said District April 29 and July 23, 1872, as authorized by the act of February 21, 1871 (16 Stat. L., 427), and also upon verbal agreements entered into in 1874 and thereafter with the Commissioners of said District.

Prior to the execution of the contracts, to wit, September 26, 1871, the board of public works, by entry or memoranda on their records, had fixed the price of grading for old gravel streets to a depth of 2 feet below the surface at 40 cents per cubic yard; January 22, 1872, 30 cents per cubic yard for grading, including the hauling of the excavated material not to exceed 200 feet, and for each additional 200 feet 1 cent additional per cubic yard beyond the first 200 feet.

And after the execution of said contracts, to wit, July 15, 1873, said board of public works, by like entry, fixed the price of hauling excavated material at 1¼ cents per cubic yard for every 100 feet hauled over the first 200 feet since June 1, 1873; and thereafter, by like entry September 27, 1873, the board made said rate applicable to "all work done since January 1, 1873."

45 Contract 264 was awarded to claimant by the board, as set forth in their records, at the rates so established, of which the claimant was notified; but by mistake in drafting the contract the rate of 40 cents for grading old graveled streets to a depth of 2 feet below the surface was omitted therefrom, and the board of public works and the claim-

ant, by mutual mistake, executed the contract without observing said omission.

Though the rate of 40 cents for old graveled streets was fixed prior to the date of the execution of contract 413, and though the clerk of the board notified claimant that said contract had been awarded to him at board rates, no entry was made by the board on their records to that effect, and as no mutual mistake is otherwise shown in that respect the claimant is not entitled to a re-formation of contract 413.

But as to contract 264, wherein the records of the board show that the same was awarded at board rates, and by mutual mistake the rate of 40 cents for old graveled streets was omitted therefrom, the claimant is entitled in that respect to a re-formation of his contract, and the same is decreed accordingly.

By the terms of the contracts aforesaid the claimant agreed to furnish at his own cost and expense all the necessary materials and labor, and, among other things, to grade the streets therein named, including North Carolina avenue, as stated in contract 264, at the price of 30 cents for each and every cubic yard of earth, sand, or gravel excavated and hauled a distance not exceeding 200 feet, and 1 cent additional per cubic yard for every 200 feet hauled beyond that distance, and 40 cents per cubic yard for old graveled streets to a depth of 2 feet, as provided by said contract 264 so re-formed.

Although the rates thus fixed by the board, at 40 cents per cubic yard for old graveled streets and 1¼ cents per cubic yard for every 100 feet hauled over 200 feet, were not made a part of contract 413, the claimant was paid said rates for the work done thereunder as set forth in the counterclaim, and for the difference between the rates so paid and those specified in the original written contract the defendants interposed their counterclaim.

In the former trial of the case the controversy was as to the quantity and classification of the excavated material on North Carolina avenue, and as to whether the prices specified in the written contract should control. On the issues thus joined the case was tried and findings of fact and conclusions of law thereon were filed, together with an opinion by the late Chief Justice Richardson, which resulted in a judgment on the counterclaim in favor of the District of Columbia for $11,264.58. (22 C. Cls. R., 366.)

On the question as to whether the court can "enforce claims founded upon these memoranda of the board of public works," and whether the board can legally pay the rate so fixed, the court said: "In the numerous cases which have been before us under the District claims act we have uniformly and unanimously held otherwise." The numerous authorities in support of that statement are cited.

It was further said in the opinion: "When a statute provides how contracts by public officers shall be made, an entire or material departure from such requirements, though sufficient at common law to bind the parties, renders the proceedings void and of no effect as obligations on either side. It has been so decided by the Supreme Court in the
46 South Boston Iron Company case (118 U. S., 37), affirming the judgment of this court (18 C. Cls. R., 165). In that case the statute passed upon by the court is in language much less mandatory than the one we are now considering, and there were offers and acceptances

n writing, signed separately by the parties, but the court held that they did not constitute a contract within the terms of the statute."

In the findings filed at that time only 63,816 cubic yards of grading was found to have been done on North Carolina avenue, although the four separate measurements made by the engineer officers of the District of the excavation therein as set forth in items 13, 15, 18, and 20 show that the claimant excavated 97,366 cubic yards, of which 64,573 cubic yards, as shown in Finding VII, were excavated under the verbal agreement with the Commissioners of the District that the claimant should be paid the board rates therefor; and the agreement thus made was after the claimant had performed his original contract, 264, in excavating about 32,793 cubic yards to bring North Carolina avenue to its then established grade.

At the former hearing the claimant was denied the rate of 60 cents per cubic yard for the excavation of stiff clay on North Carolina avenue on the ground, as stated in the opinion of the court, that "the stiff clay, which is one kind of earth, rendered the grading in some places, no doubt, more difficult than it would have been had the earth been of a lighter material, but by the sixth article of contract 264 it was agreed, among other things, that all loss arising out of the nature of the work to be done, or from any unforeseen obstructions, or difficulties encountered in the prosecution of the same, should be sustained by the contractor."

That ruling was based on the finding then made that the stiff clay excavation was done at the written contract rate of 30 cents per cubic yard, the contractor agreeing to sustain any unforeseen obstructions or difficulties encountered in the prosecution of the work; but as the excavation of the stiff clay was done under the verbal agreement with the Commissioners in 1874, long after the claimant had performed his original contract, 264, he is entitled to the rate therefor then established and paid to other contractors for like work, as set forth in Finding VIII, which rate we find was reasonable and allow, as set forth in item 26, Finding IX.

We have also added to the former finding of work done on North Carolina avenue the excavation under the sidewalks and carriageway, including the haul of the excavated material, at 1¼ cents for every 100 feet hauled, as set forth in item 27, Finding IX.

In respect to work done on D street, the original contract 264 required the excavation of about 4,267 cubic yards to bring that street to the then established grade, which work was completed in August, 1872, as set forth in Finding III.

Nearly two years later, and after the Commissioners had established the new grade for North Carolina avenue, as aforesaid, it became necessary to further grade D street to bring it to the new grade, and the claimant with like verbal agreement with the Commissioners performed said additional work, for which he was only allowed the rate of 1 cent per cubic yard for every 200 feet of haul, and he now claims under said verbal agreement with the Commissioners the board rate of 1¼ cents per cubic yard for every 100 feet of haul, which we allow, as set forth in item 5, Finding IX.

And in addition thereto the claimant is entitled, under the re-for-
47 mation of his contract, to the rate of 40 cents per cubic yard for the old gravel excavated in said street, as set forth in item 2, Finding IX.

In regard to the work performed on Third street, the original contract 413 required, to bring said street to its then established grade, the excavation of about 7,078 cubic yards, as set forth in Finding XIII, though some additional grading was done thereon under the written extensions of said contract at board rates, as therein provided for, which were allowed.

The change of the grade of North Carolina avenue also necessitated additional excavation in Third street to bring it to the new grade so established by the Commissioners in 1874, and under the direction of said Commissioners, and with the like verbal agreement as set forth in Finding XIII, the claimant further excavated Third street, taking therefrom 22,248.83 cubic yards, for which he was, in the former findings, allowed but 1 cent per cubic yard for the haul of 200 feet, instead of the board rate of 1¼ cents per cubic yard agreed to be paid, and which he is now allowed, as stated in item 24 in said Finding XIII.

As we have denied the claimant's prayer to re-form contract 413 in respect to the rate of 40 cents for old graveled streets, for the reason set forth above, the claimant is allowed only the written contract rate of 30 cents therefor, except where the written extension of said contract provided for board rates, in which case they are allowed as indicated in the several findings.

We have thus stated the differences between the findings heretofore filed and the findings now filed.

On the former trial the court proceeded upon the theory that all the work done was under the written contracts and the written extensions thereof, and upon that theory the law of the case is correctly stated in the opinion of the court, for the reason that both contracts were entered into by the claimant with the board of public works under the act of February 21, 1871, section 37 (16 Stat. L., 427), providing, among other things, that "all contracts made by the said board of public works shall be in writing, and shall be signed by the parties making the same, and a copy thereof shall be filed in the office of the secretary of the District; and said board of public works shall have no power to make contracts to bind said District for the payment of any sums of money except in pursuance of appropriations made by law, and not until such appropriations shall have been made."

As that act required all contracts made by the board to be in writing, "signed by the parties making the same," it follows that the board had no power to authorize work to be done at prices fixed by them which were merely entered on the records of their office.

Where such prices were agreed to be paid, the act required that the contract embodying the same be reduced to writing and signed by the parties, and in several extensions of the contracts that course was pursued, as shown in Findings VI and XI.

Under that act, as rightly construed by the court, "the board of public works was a body of limited jurisdiction, with their method of making contracts expressly defined, and the contracts themselves limited to appropriations made by law."

Hence the entry in the journal or other record of the board fixing rates could not affect the rates fixed in a written contract.

Such was the ruling by the Supreme Court in the case of Barnard v. District of Columbia (127 U. S., 409, 411), wherein it was
48 said, "the entry in the journal of the board was no part of the

contract with the claimant, nor could it in any respect control the construction or limit the effect of such contract. The board could not in that way either make a new contract or alter the one previously made so as to bind the District."

And in the case of Eslin (29 C. Cls. R., 370, 393), in respect to the same question the court said: "This question has been so fully discussed in the recent opinion of the chief justice, in the case of Barnes v. District of Columbia (22 C. Cls. R., p. 366), that it is unnecessary to go over the ground again. We hold in these cases, as we held there, that these orders of the board of public works do not change the written contracts between the parties made before the orders were issued, and much less contracts made thereafter.

The plaintiff coming into court for a final settlement with the District, and having received public money to which he had no legal claim, must be held liable to refund it.

And so in that case it was held that the District could recover back the overpayment as was held in the present case, to which ruling the court adheres in respect of the counterclaim, for the reason that the overpayments upon which the counterclaim is based were payments in excess of the rates fixed by the written contract under which the work was done.

But, as we now find that the additional work of excavation and consequent hauling were done by the claimant under the verbal agreement with the Commissioners of the District and the work accepted as set forth in the findings, the question is, Had the Commissioners the authority so to contract in respect thereto?

By the provisions of the act of June 20, 1874, section 1 (Stat. L., 116), it was provided, "that all provisions of law providing for an executive, for a secretary for the District, for a legislative assembly, for a board of public works, and for a delegate in Congress in the District of Columbia are hereby repealed," except as to the term of office of the delegate then in Congress.

By section 2 of said act it was provided, "That the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint a commission, consisting of three persons, who shall, until otherwise provided by law, exercise all the power and authority now lawfully vested in the governor or board of public works of said District, except as hereinafter limited; who shall be subject to all restrictions and limitations now imposed by law on said governor or board * * * but said commission, in the exercise of such power or authority, shall make no contract, nor incur any obligation other than such contracts and obligations as may be necessary to the faithful administration of the valid laws enacted for the government of said District, to the execution of existing legal obligations and contracts, and to the protection or preservation of improvements existing, or commenced and not completed, at the time of the passage of this act." * * *

Under the provisions of that act it would seem that the Commissioners of the District were limited in the exercise of their authority to the restrictions and limitations imposed by law on the governor and the board of public works, and they were thereby prohibited in the exercise of their power from making contracts or incurring any obligation otherwise than as there stated.

49 However, by the act of June 16, 1880 (21 Stat. L., 284), being the act providing for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear and determine the same, and for other purposes, it was, among other things, provided by section 1, "That the jurisdiction of the Court of Claims is hereby extended to, and it shall have original legal and equitable jurisdiction of—

"All claims now existing against the District of Columbia arising out of contracts made by the late board of public works and extension thereof made by the Commissioners of the District of Columbia;

"And such claims as have arisen out of contracts made by the District Commissioners since the passage of the act of June twentieth, eighteen hundred and seventy-four;

"And of all claims for work done by the order or direction of the said Commissioners and accepted by them for the use, purposes, or benefit of the said District of Columbia, and prior to the fourteenth day of March, eighteen hundred and seventy-six."

It will thus be observed that three classes of claims are recognized by the act conferring jurisdiction upon the court.

(1) All claims against the District arising out of contracts made by the board of public works and extensions thereof made by the Commissioners of the District;

(2) All claims arising out of contracts made by the Commissioners since the passage of the act of June 20, 1874, and

(3) All claims for work done by the order or direction of the said Commissioners and accepted by them for the use, purposes, or benefit of the District prior to March 14, 1876.

It will thus be seen that the Congress recognized claims for work done "by the order or direction of the said Commissioners," where the work had been accepted by them for the use and benefit of said District prior to March 14, 1876.

And this view of the law is in harmony with the decision in the case of Campbell and Eslin v. The District of Columbia (18 C. Cls. R., 193), wherein it was held, in substance, that where contracts were made and work completed under them a subsequent order of the board of public works, establishing for such work higher prices, would not apply to work done under such preexisting contracts.

But where there was a revival of the contracts after the work under them had substantially been completed and such revived contracts apply to distinct work, subsequent to the raising of the rates for like work, a contractor was held to be entitled to the benefit of the increased rate for such subsequent work. (See authorities there cited.)

In the present case there does not appear to have been, in terms, a revival of the written contracts, but the verbal agreements on the part of the Commissioners of the District were that for the new or additional work done by the claimant he should be paid the rates therefor established and paid by the board of public works, so that whether the work be regarded as having been done under the contracts as revived or under the verbal agreement of the Commissioners, as set forth in findings, the claimant, in either event, is entitled, under the provisions of the act of 1880, to the benefit of the rates so established and promised to be paid for the new or additional work performed by him.

Therefore the claimant is entitled to recover on the whole case, after deducting the amount heretofore paid him from the amount shown by the findings to be due, less the counterclaim in favor of the defendants for $13,039.79, the sum of $23,694.47, for which latter amount judgment will be entered, and of which judgment there shall be paid to Samuel J. Ritchie, assignee, as agreed by said claimant and which is hereby ordered, the sum of twelve thousand dollars ($12,000).

The judgment herein rendered against the District of Columbia is due and payable March 1, 1876, within the meaning of the provisions of section 6 of the act of June 16, 1880, chapter 243.

50 XIV.—*Judgment of the court entered March 31, 1902.*

ELIAS E. BARNES
vs.
THE DISTRICT OF COLUMBIA.

At a Court of Claims held in the City of Washington on the 31st day of March, 1902, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said Elias E. Barnes do have and recover, in the manner provided by the act of June 16, 1880, chapter two hundred and fifty-three, the sum of twenty-three thousand six hundred and ninety-four $\frac{47}{100}$ dollars ($23,694.47) upon debts of the District of Columbia, due and payable March 1, 1876, within the meaning of the sixth section of the said act; twelve thousand dollars ($12,000) of said sum are to be paid to Samuel J. Ritchie, assignee of said Barnes.

BY THE COURT.

51 XV.—*Defendant's application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 31st day of March, 1902, in favor of the claimant, the defendant, by its Attorney-General, on the 22nd day of April, 1902, makes application for and gives notice of an appeal to the Supreme Court of the United States.

L. A. PRADT,
Asst. Attorney-General.
ROBERT A. HOWARD,
Special Assistant Attorney.

Filed April 22, 1902.
Allowed June 26, 1902, in open court.

LAWRENCE WELDON,
Presiding Judge.

52 XVI.—*Mandate of Supreme Court of the United States dismissing the appeal for want jurisdiction. Filed in the Court of Claims, January 12, 1903.*

A mandate of the Supreme Court of the United States, dated January 8, 1903, in the above-entitled cause, was filed in the Court of Claims January 12, 1903, in which it is ordered that—

"Whereas, in the present term of October, in the year of our Lord

one thousand nine hundred and two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and on a motion to dismiss, which was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this court that this appeal be, and the same is hereby, dismissed for the want of jurisdiction. December 8, 1902."

53 *Motion of defendant for appeal. Filed May 11, 1903, under the act of March 3, 1903.*

ELIAS E. BARNES
v.
THE DISTRICT OF COLUMBIA. } No. 47, D. C.

Motion for allowance of appeal, provided for by the act of March 3, 1903.

Petitioner states that from the judgment rendered in this case on March 31st, 1902, an appeal was allowed by this court to the Supreme Court; that on filing the transcript in the Supreme Court the claimant interposed a motion to dismiss the appeal for want of jurisdiction in the court to entertain the same. This motion was based upon the following provision of law embraced in the act of June 6, 1900 (c. 789, 31 St. L., 572):

"Defending suits in claims: For defending suits in the United States Court of Claims, two thousand dollars: Provided, that no judgment heretofore or hereafter rendered under the act of June sixteenth, eighteen hundred and eighty, entitled 'An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes,' shall be paid by the Secretary of the Treasury until said judgment shall have been reported to, and specific authority for payment thereof granted by Congress."

This motion was allowed and the appeal dismissed. Subsequently the following provision was enacted in "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and three, and for prior years, and for other purposes." (c. 1006, St. 2d sess. 57th Cong., 1031, 1070):

"For the payment of the judgments, except the judgment in favor of Elias E. Barnes, rendered by the Court of Claims, reported to Congress at its present session in House Document Numbered Three hundred and sixty and Senate Documents Numbered One hundred and eighty-seven and two hundred, two hundred and ninety thousand three hundred and fifty-four dollars and forty-nine cents: Provided, that none of
54 the judgments herein provided for shall be paid until the right of appeal shall have expired: And provided further, that the proviso contained in the act approved the sixth day of June, anno Domini nineteen hundred, entitled 'An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes,' which reads as follows: Provided, that no judgment heretofore or hereafter rendered under the act of June sixteenth, eighteen hundred and eighty, entitled 'An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction

on the Court of Claims to hear the same, and for other purposes,' shall be paid by the Secretary of the Treasury until said judgment shall have been reported to, and specific authority for payment thereof granted by, Congress, be, and the same is hereby, repealed; and from all final judgments or decrees heretofore rendered in suits of the character of those mentioned in said proviso an appeal shall be allowed to the Supreme Court of the United States at any time within ninety days after the passage of this act, except in cases where the amounts found due by said court have been paid at the Treasury."

And your petitioner states that this judgment in favor of Elias E. Barnes is the judgment hereinbefore recited, and that the same has not been paid at the Treasury.

Wherefore comes petitioner, on this 11th day of May, 1903, a day within ninety days after the passage of the aforementioned act of March 3, 1903, and prays this honorable court that the allowance of an appeal from the judgment rendered herein on March 31, 1902, be granted to the defendant.

L. A. PRADT,
Assistant Attorney-General.

ROBERT A. HOWARD,
U. S. Special Attorney.

Filed May 11, 1903, and ordered to the law calendar.

OCTOBER 26, 1903.

Ordered that the appeal be allowed as prepared for.

BY THE COURT.

55 Court of Claims.

ELIAS E. BARNES
vs.
THE DISTRICT OF COLUMBIA. } No. 47.

I, John Randolph, assistant clerk Court of Claims, hereby certify that the foregoing are true transcripts of record, in the above-entitled cause, of the findings of fact and conclusions of law and opinion filed by the court, March 31, 1902; of the final judgment of the court entered March 31, 1902; of the application of the defendant for an appeal to the Supreme Court of the United States, filed April 22, 1902, and the allowance of same; of the mandate of said Supreme court, dated January 8, 1903, dismissing said appeal for want of jurisdiction; of the motion of defendant, filed May 11, 1903, for granting an appeal to said Supreme Court, as provided by act of Congress of March 3, 1903, and of the allowance of said appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 19th day of November, 1903.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No. 19,135, Court of Claims. Term No. 143. The District of Columbia, appellant, vs. Elias E. Barnes. Filed November 21st, 1903. File No. 19,135.

O